Wherefore defendant prays that the amended bill of complaint be dismissed and it have such other and further relief as to the Court appears to be just.

Eppstein & Hirshfield, Solicitors for Chaucer Corporation, Office & P. O. Address, 521 Fifth Avenue, Borough of Manhattan, City of New York.

(Verified on July 2, 1932 by Paul M. Coonrod, as secretary of Chaucer Corporation.)

[fol. 73] In United States District Court, Southern District of New York

In Equity No. E. 66-185

George W. McCandless, as Receiver of Duquesne Gas Corporation, Plaintiff,

vs.

Maxime H. Furlaud, Carlos Reuter, Kingston Corporation, Byron Corporation and Chaucer Corporation,

Statement of Evidence

Before Hon. John C. Knox, D. J.

Appearances:

Ehrich, Royall, Wheeler & Walter, Esqs., Solicitors for Complainant (Ralph Royall, M. W. Ehrich, Wm. A. Magee, Clark Miller, Esqs., of Counsel).

Eppstein & Hirshfield, Esqs., Solicitors for all of the Defendants with the exception of Carlos Reuter (not served) (Ira W. Hirshfield, Esq., of Counsel).

George W. McCandless, called as a witness by the complainant, testified as follows:

Direct examination.

By Mr. Royall:

I am the plaintiff in this suit, and I was appointed Re- [fol. 74] ceiver of the Duquesne Gas Corporation by the

United States District Court for the Western District of Pennsylvania on January 19th, 1932.

I was appointed in the suit in which the Central Hanover Bank & Trust Company, as Trustee under the first mortgage of the Duquesne Gas Corporation, was plaintiff, combined with another suit that was brought in the same Court.

Q. Thereafter did you apply for and obtain authority from the Court to bring this suit?

Mr. Hirshfield: May I object to that, your Honor?

The Court: What is the ground of your objection?

Mr. Hirshfield: The ground of my objection is that the order itself is the best evidence of what is contained therein. I might say at this point that I intend to raise the point in the course of this trial that the trustee had no authority to bring the suit in the particular action under which he was appointed.

Mr. Royall: What disposition does your Honor make of the objection?

The Court: You better have the order.

By Mr. Royall:

Q. Were you thereafter appointed ancillary receiver by this District Court?

A. I did not get the question.

Q. I say, were you thereafter appointed ancillary receiver in this district?

A. Yes.

Q. Were you there also authorized to bring suit?

Mr. Hirshfield: I make the same objection.

[fol. 75] The Court: The order would be the best evidence.

Mr. Royall: I ask that the record in the ancillary proceedings in this matter be marked in evidence.

The Court: I will take the order appointing the witness as ancillary receiver—that is, if it shows it, I will take it.

Mr. Royall: I ask that the file be received in evidence.

(Document deemed marked Plaintiff's Exhibit 1.)

CHARLES C. NUSS, called as a witness by the complainant, testified as follows:

Direct examination.

By Mr. Royall:

At the time of the receivership I was President of the Duquesne Gas Corporation. I, my father and some others together were associated in the ownership of the Nuss property.

I first met Mr. Reuter in January, 1930, in Pittsburgh. He said he was interested in buying gas properties and that he had heard we had some property, and that he would like to arrange a sales agreement whereby he might acquire it.

Q. Will you tell us briefly, in your own way, what your further contacts about that time were with Mr. Reuter, and what next happened?

A. Do you mean just in regard to my own property?

Q. In regard to any of your activities with respect to this whole affair with Mr. Reuter?

Mr. Hirshfield: May I object to this, your Honor? Reuter is a defendant who has not been served.

[fol. 76] The Court: Was there a concert of action between all of these parties including Reuter?

Mr. Royall: Oh, yes, Reuter and Furland & Company were together in the enterprise. It was called Furland & Co.; later on it became Furland & Reuter. It seems that Reuter was so good, that he deserved to have his name in the firm.

The Court: All right.

Mr. Hirshfield: Exception.

Mr. Reuter said that he had heard of other properties in that territory that he might desire to acquire and asked about the Behm property and other properties. Mr. Behm and I discussed our properties and the prices for our properties. Mr. Reuter asked that I either accompany some of his employees or go myself to find out whether other property owners would be interested in drawing up sales agreements. We agreed on the price of $660,000 for my property, $200,000 for Mr. Behm's property and for a certain other property known as the Garrison property, $120,000.

Q. I show you a paper and ask you if this is the sales agreement referred to by you, relating to the Nuss property (handing paper)?

A. This is the sales agreement or option agreement.

Mr. Royall: I offer it in evidence. I have had a summary of this made, and when we get through, we can put in a summary.

Mr. Hirshfield: I object to the introduction of this as being immaterial and not binding on Furland personally.

The Court: I will take it for the time being, and if it [fol. 77] does not become material, at a later time you may move to strike it out, but in the meantime, I will take it and allow the case to go on.

Mr. Hirshfield: Exception.

(Marked Plaintiff's Exhibit No. 2.)

Plaintiff offered in evidence Plaintiff's Exhibit No. 3, being an agreement dated January 7, 1930, between Daniel Ritter, as purchaser, and Henderson Oil & Gas Co. with an assignment by Ritter to the Kingston Corporation, the purchase price being $165,000.

Plaintiff offered in evidence Plaintiff's Exhibit No. 4, being an agreement dated December 27, 1929, between Starr and Kingston Corporation, as purchaser, affecting the property known as Trafford Oil & Gas Co., the purchase price of which was $815,000.

Plaintiff offered in evidence Plaintiff's Exhibit No. 5, being an agreement dated January 6, 1930, between Ritter and Wally covering the property known as the Wally property, the consideration recited being $135,000 together with an assignment by Ritter to the Kingston Corporation.

Plaintiff offered in evidence Plaintiff's Exhibit No. 6, consisting of two agreements dated February 5, 1930, between Kingston Corporation and Victor D. Behm and wife covering the Behm properties and reciting an aggregate purchase price of $200,000.

Plaintiff offered in evidence Plaintiff's Exhibit No. 7, being an agreement dated January 2, 1930, between Daniel [fol. 78] Ritter and I. T. Campbell, covering property known as the Campbell property, and reciting a consideration of $135,000 to which is attached an assignment by Ritter to the Kingston Corporation.

Plaintiff offered in evidence Plaintiff's Exhibit No. 8, consisting of an agreement dated February 5, 1930, between Kingston Corporation and one Garrison, reciting a consideration of $120,000 covering the sale of the Garrison property.

Plaintiff offered in evidence Plaintiff's Exhibit No. 9, being an agreement dated January 4th, 1930, between Ritter and A. J. Degenther, reciting a consideration of $125,000 covering property known as the Byers property, to which is attached an assignment thereof to the Kingston Corporation.

Plaintiff offered in evidence Plaintiff's Exhibit No. 10, being an agreement between Ritter and one Gallagher, dated January 8, 1930, reciting a consideration of $185,000 covering property known as the Gallagher property, and is assigned by Ritter to the Kingston Corporation.

The witness identified the foregoing Plaintiff's Exhibits 3-10 inclusive.

Objections were made to the introduction of all of the foregoing on the ground that the said evidence was immaterial, and upon the further ground that the said evidence was not binding upon the defendant Maxime H. Furlaud.

Objections overruled, and exceptions taken.

[fol. 79] Q. Have you prepared a schedule of these contracts, showing the purchase prices, the appraised values, dates of sale, assignment of sales agreements, and so forth and so on, for the convenience of the Court?

A. I did.

Q. I show you a paper and ask you if that is the schedule that you refer to (handing witness)?

A. It is.

Q. Is it correct?

A. Yes.

Mr. Royall: I ask that it be marked in evidence, as a summary of matters already in evidence, simply for the convenience of the Court.

Mr. Hirshfield: I object to that, your Honor, upon two grounds. First, it is entirely immaterial, and second, it is not binding upon Furlaud.

By the Court:

Q. This is a schedule that is made up of these papers that have just been offered in evidence?

A. Yes.

The Court: I will take it, simply as a compilation.

Mr. Hirshfield: Your Honor, I understand there are some compilations as to appraisals. I suppose you do not refer to them.

The Court: It is a schedule of these various option agreements.

Mr. Royall: I did say something about appraisal.

The Court; As I understand, this is simply a summary of what has already been put in.

[fol. 80] Mr. Hirshfield: I desire to raise a question sharply on the matter of the appraisal.

The Court: I will take it simply as a compilation of what is already in evidence. That is the only bearing it will have.

(Marked Plaintiff's Exhibit No. 11.)

Thereafter, Mr. Reuter informed us, especially Behm and myself, that it would be necessary to have an extension drawn extending the time when payments would be made against the property. This extension agreement was made between me and the Kingston Corporation. At that time, $15,000 was paid to me and I was to secure the option on the Garrison property so as to bind me and to bind the Garrison option.

Q. Have you obtained from the files of the Duquesne Gas Corporation any similar extension agreements, so-called?

A. I did.

Mr. Royall: I offer in evidence the so-called extension agreement between Nuss and the Kingston Corporation dated the 3rd day of March, 1930.

Mr. Hirshfield: I make the same objection to that, your Honor.

The Court: Same ruling.

Mr. Hirshfield: Exception.

(Marked Plaintiff's Exhibit 12.)

Mr. Royall: I am willing to stipulate that the same objection may be taken, or considered to be taken, to all this line of testimony.

The Court: This is just the chain of title, I take it, to [fol. 81] these properties that came in.

Mr. Royall: I will save my friend's time and the Court's time by stipulating that he be deemed to have taken an objection to this whole line of testimony and an exception to the Court's ruling.

The Court: Very well.

Plaintiff offered in evidence Plaintiff's Exhibit No. 13, being a paper dated March 3rd, 1930, covering an extension of the Behm option and reciting a consideration of $4,000.

Plaintiff offered in evidence Plaintiff's Exhibit No. 14, being an extension signed by Garrison and others, dated March 3rd, and reciting as consideration for the extension of the option the payment of the sum of $2,000.

Those are all the extension agreements that I was able to produce from the files.

All of the deeds covering the nine properties were delivered on April 9th.

About the 10th of March we received a letter from the Kingston Corporation which was marked "Plaintiff's Exhibit No. 15", being a letter dated March 12th from Kingston Corporation, addressed to Mr. Nuss and others.

Plaintiff offered in evidence Plaintiff's Exhibit No. 16, being a letter addressed by Mr. Schuller, as Vice-President of Kingston Corporation to Mr. Garrison and others dated March 12th.

Plaintiff offered in evidence Plaintiff's Exhibit No. 17, [fol. 82] being a letter addressed to Mr. James S. Gallagher, owner of the Gallagher property.

Plaintiff offered in evidence Plaintiff's Exhibit No. 18, being a notice dated March 14th, 1930, signed by Schuller, as Vice-President of Kingston Corporation, stating that Kingston Corporation elects to proceed in accordance with the agreement, and also recites the delivery by Kingston to Nuss of a check for $15,000 of which $2,000 is to be paid to Garrison on or before March 15th.

Mr. Royall: I think we might, in order to save time, Mr. Hirshfield, agree that the files disclose similar letters addressed by Mr. Schuler, vice-president of Kingston, to Garrison, in the case of Garrison property, reciting $2000 had

been delivered to Mr. Nuss for him, and a letter to Degenther, being a representative of the Byers property; a letter to Gallagher, a letter to Campbell, a letter to Behm, Starr and Wally, and that is to be taken for granted, for the purposes of the case, that that arrangement was made for the entire list of nine properties—right?

Mr. Hirshfield: Right.

A deed or indenture of conveyance of my gas leases was prepared by the purchasers and deposited in escrow, in the Citizens National Bank of Washington, Pa., and the vendors were procured to execute the document of conveyance. All these papers were deposited in escrow in that bank under an understanding that they were to be delivered to the Duquesne Gas Corporation together with a deed upon my receiving the balance of the purchase price.

[fol. 83] Mr. Royall: The documents in question are powers of attorney from Thompson et al., to yourself and another. An assignment from yourself and wife—from J. B. Nuss and wife to Duquesne Gas Corporation of certain leaseholds; a further assignment from the same to the Duquesne Gas Corporation of certain leaseholds; seven assignments of gas sales contracts to Duquesne Gas Corporation executed by the same; transfer order on Southwest Pennsylvania Pipe Lines, dated March 11th, 1930, from J. B. Nuss and C. C. Nuss as trustees, to Duquesne Gas Corporation; and transfer order on Southwest Pennsylvania Pipe Lines, signed by J. B. Nuss and C. C. Nuss, trustees, to Duquesne Gas Corporation.

For the purpose of the record, if I may, in order to make the picture complete, state the substance of this—I see Mr. Hirshfield is looking over my shoulder to see that I make no mistake——

Mr. Hirshfield: Are you offering that in evidence?

Mr. Royall: I will offer it in evidence, yes.

Mr. Hirshfield: I have the same objection to this as the others.

The Court: The same ruling.

Mr. Hirshfield: Exception.

(Marked Plaintiff's Exhibit 19.)

Similar arrangements were made in respect of all the nine constituent properties through other local banks conveniently situated for the purpose.

The deeds recited in those letters as deposited were de-
[fol. 84] posited. They were deeds of conveyance running to the Duquesne Gas Corporation, as grantee, and were intended to convey to the Duquesne Gas Corporation the properties described in the deeds, the subject matter of the various sales. Similar deeds were delivered to the other escrow depositories with respect to all the other nine transactions.

Q. Mr. Nuss, are you an engineer by profession?
A. Do you mean at the present time, or have I been?
Q. Have you been?
A. Yes, I have been.
Q. Are you a graduate engineer, that is to say, have you had a technical education?
A. Yes, sir.
Q. Where?
A. I received a B.S. degree from W. & J. College in 1914.
Q. W. & J. means Washington & Jefferson?
A. Washington & Jefferson.
Q. Thereafter did you practice the profession of engineer?
A. Yes, sir.
Q. For how long a period of years?
A. For eleven years.
Q. Now, at the time of the organization of the Duquesne Gas Corporation, you and other members of your family were in business, the nature of which was the developing of gas wells as an enterprise of your own, isn't that so?
A. Yes.
Q. How long have you been active as a practical gas man, as an owner and developer?
A. For about eight years—eight to ten years.
Q. Have you bought gas leases and other gas properties?
A. I just bought leases.
Q. You bought gas leases. Well these are gas leases; that is what Duquesne owns, were gas leases?
A. There were no producing wells.
[fol. 85] Q. Even with a producing well on it, a gas lease is still a gas lease, isn't it?
A. It is termed as such, yes.
Q. In fact, it is.
A. It is an oil and gas lease, to state it correctly.

Q. You are familiar with the values of such properties, aren't you?

A. Yes, sir.

Q. And you are familiar with all these properties, the Nuss property, the Gallagher property and all of them in this whole group of property in the Duquesne Gas Corporation matter?

A. Yes.

Q. You are, in fact, now the general manager of the receiver in conducting these properties?

A. Yes.

Q. And have you been active in the Duquesne Gas Corporation ever since it acquired the properties, haven't you?

A. Yes.

Q. And you continued so for the corporation and since the receivership for the receiver, isn't that so?

A. Yes.

Q. And in that way, you are familiar with all these properties, are you not?

A. Yes.

Q. What, in your opinion, is the fair value of these properties as at——

Mr. Hirshfield: I object.

Mr. Royall: Wait until I finish my question. I know you want to object, and I will give you a chance to.

Mr. Hirshfield: Very well.

Q. (Continuing.) What, in your opinion, is the fair value of these properties as at about January to April of 1930?

Mr. Hirshfield: May I object to that, your Honor?

[fol. 86] Mr. Royall: I mean the fair market value.

Mr. Hirshfield: I object to that, your Honor, on two grounds. First, Mr. Nuss is not qualified as an expert. As he testified himself, he never bought a lease with a producing well on it, and inasmuch as a great many of these have producing wells on them, I must object to his testimony on that ground.

I object to it on the further ground of immateriality. It has absolutely no bearing on this case, what the values of these properties were, whether they were worth one dollar or one billion dollars. Certainly there is no allegation in the pleadings as to any particular value or lack of value of these wells.

The Court: What is the materiality or relevancy of the value of the property as of that date, over a year after what was paid for them?

Mr. Royall: The question does not come to the value over what they were paid—maybe they were not paid as much as they should have been paid—it seems to me, this being an equity case, it is certainly an essential part of this whole picture to know what this corporation got out of this thing. I suppose if your Honor were satisfied that this corporation really was not interested in what went on here and really got several million dollars worth of property——

The Court: The question here, as to the value of the property, as of about the time they were taken over, is one which might be very material if it were charged in the com-[fol. 87] plaint or the constituent part of your case that Furland & Company or the four defendants from whom you seek a recovery, took over these properties at grossly excessive values knowing they were worth much less than the amount they paid.

Mr. Royall: Your Honor, that is the theory of our case. We claim this, that these promoters took this four million dollars from the public for the bonds, plus a million dollars from the public for the notes and they were to use it and they were bound to use it for the benefit of the corporation.

The Court: If they exercised good faith in making the purchases, believing the properties would be worth this sum of money, there would be no fraud, as far as that was concerned. That might even be a fair value for the property—still, intent to perpetrate a fraud by floating upon this property, which let us say for the purpose of argument were all in bad faith—a large bond issue quite beyond the reasonable market value of the properties and pocketed the difference between what was required to take up the properties and the sum that they sold or realized upon the bonds——

Mr. Hirschfield: That is not pleaded in this case, your Honor.

Mr. Royall: Yes, it is.

The Court: Very well, let him see whether it is, so that we can get along. I do not see at the present time how that valuation would have very much to do with this case at this time.

[fol. 88] Mr. Royall: I am sure I will be able to convince your Honor that it is quite material.

Mr. Hirshfield: May I have an exception to your Honor's ruling?

The Court: Oh, yes.

The Witness: The fair market value, in my opinion, at that time was about $2,700,000.

By the Court:

Q. And what was the aggregate amount paid?

A. Two million five hundred thousand dollars—that is from memory.

Mr. Royall: This shows the amount that was paid, from this paper, $2,572,989.

By Mr. Royall:

Q. Now, Mr. Nuss, you testified that the property which you turned over was put in, and you received for it the sum of $660,000?

A. Yes.

Q. And your property became the subject of appraisal for the purchase of a bond issue, did it not? It became the subject of an appraisal, didn't it?

A. Yes, it did become the subject of an appraisal.

Q. Which appraisal was reflected in the statements contained in the bond issue, isn't that so?

A. Yes.

Q. And what values did your properties get put into that appraisal?

Mr. Hirshfield: I again make the same objection. I do not see how that is in any way material to any issue raised here.

[fol. 89] The Court: What is the source of his knowledge?

Mr. Royall: He has seen the appraisal.

The Court: I know, but that is hearsay evidence. That isn't direct evidence. It doesn't appear in the books of the corporation anywhere?

Mr. Royall: Yes, the books of the corporation carry the appraisals on the property.

The Court: Or the statement of the prospectus?

Mr. Royall: Yes, the prospectus.

The Court: But the prospectus does not break down?

Mr. Royall: The prospectus does not, but the appraisal breaks down.

The Court: All right, I will take it if you know.

Mr. Hirshfield: Exception.

Q. Will you answer the question?

A. It reports the appraised value of my property was $2,500,000.

By the Court:

Q. What did you think it was worth at that time?.

A. $660,000.

Q. You got full value for it?

A. Well, I considered that it was worth $800,000, but I thought he was entitled to the difference, so I sold it for $660,000.

Q. How many gas wells did you have on that property?

A. I had 17, I believe, and three drilling that were simultaneously turned over.

Q. How many feet of gas were you producing then?

[fol. 90] A. 700 million feet, or $140,000 at 20 cents.

Q. You were selling your gas to manufacturers?

A. I was selling manufacturers or their subsidiary companies that were affiliated with them—I was selling approximately 700 million feet a year.

Mr. Hirshfield: And may I say to your Honor that I was totally unprepared for this sort of testimony and I am not in any way prepared to controvert any of his testimony on that, because it did not seem to me from the pleadings that it could b brought out.

The Court: I will take it for the present. I am not certain at this time whether it is proper, but later I will entertain a motion to strike it out.

Mr. Hirshfield: I submit on the pleadings it has nothing to do with the case, and I think your Honor will agree with me when we come to consider the law of the case.

(Recess until 2:30 P. M.)

Afternoon Session

Charles C. Nuss, resumed the stand.

Direct examination.

By Mr. Royall (continued):

Q. Now, what is the transaction, Mr. Nuss, involving, the transfer by you, without consideration of some 14,000 acres of undeveloped land?

A. There was a transfer.

[fol. 91] Q. Tell us about that transaction.

A. Included in the sale of my property, there was 14,000 acres of undeveloped territory——

Q. Was this a lease subject to some stipulated annual payment?

A. It was a lease contingent upon a royalty basis of one-eighth of the proceeds of all gas sold, with a stipulation that one well be drilled within six months from the date of the lease, and wells to be drilled so often thereafter, in order to hold the lease in good standing.

Q. Would a lease like that to be sold or transferred generally have a market value, some market value?

A. Ordinarily, acreage of that sort is usually sold for a nominal price per acre, ranging from one dollar to two dollars, and maybe in a good sized block, it may be worth $5.00.

Q. But you say this was turned over by you without any additional consideration?

A. Yes.

Q. How did that item of 14,000 acres of undeveloped land appear in the appraisal? What value was assigned to it in the appraisal by the so-called experts?

Mr. Hirshfield: I again object to the use of Mr. Nuss as an expert, and I again object to the introduction of any testimony whatsoever along this line.

The Court: Do you object to the sum which he gives, which was recorded by these people who made the appraisal?

Mr. Hirshfield: Not the result that was given, but after all, this is leading up to his own estimate of value.

The Court: The same ruling.

Mr. Hirshfield: Exception.

Q. Will you answer the question?

A. It was given a value of $840,000.

[fol. 92] Q. In other words, Mattison, Davey & Winters, experts who appraised a part of the property, including your properties, used as a factor in building up your grand total of $5,100,000, the sum of $840,000 as the value for this property which you have last mentioned, which was turned over without consideration by you?

A. They did.

Q. The property was wholly undeveloped, was it?
A. Yes.

By the Court:

Q. Where did it lie?
A. It was in Preston County, West Virginia, and probably a part in Monongalia County.

By Mr. Royall:

Q. What was that based on, a valuation of future potentialities, was that the idea?
A. It was an estimate of future income or earnings from that property.
Q. Based upon the assumption that it could be drilled——

Mr. Hirshfield: Your Honor, I object again to this testimoney.

The Court: I suppose he cannot tell what the basis of the value was. It was undeveloped land. You are asking him to tell you the values which were placed upon these properties by someone who was retained by the Duquesne Gas Company.

Mr. Royall: By Furlaud.

The Court: If it is in the books, that is the best evidence but just as a matter if convenience, I will let him state.

[fol. 93] Mr. Hirshfield: I want to object to that. I want them to offer it if they are going to refer to it.

Mr. Royall: Just a minute on that. Their circular refers to the fact that Mattison, Davey & Winters placed a certain value on the property of $5,100,000; also other properties at $1,700,000. They plead that the properties were worth that. Now, we say if they want to rely upon these appraisals in this case as the evidence of value——

Mr. Hirshfield: Just where do we plead it?

Mr. Royall: Do you want me to show you that?

Mr. Hirshfield: Yes.

Mr. Royall: All right, "Defendants allege that all the bonds, notes and stock of the Duquesne Gas Corporation were issued in consideration of the payment to the Duquesne Gas Corporation of certain sums of money and transfer to it of properties and other things of the value, the fair and reasonable appraised value of the bonds and notes issued——

The Court: Gentlemen, I think you are wasting time, as far as that is concerned. You are now offering—if you do offer the books showing this appraisal, as being appraised on the actual value, you are simply offering it, as I understand it, if you decide to do so, to indicate what they did say was the value, without any endorsement of your client of that value. Now, it seems to me that the better thing for you to do is, with that limitation, to offer what the ap- [fol. 94] praisers show rather than do it indirectly through the method of asking the witness who has seen the appraisal on the books.

Mr. Royall: Well, your Honor, my proof is a little out of order, but I thought while I had this witness on the stand, I would ask him about that, but later on, and very soon, by a witness who will be called, I will prove it with these circulars.

The Court: All right, I don't know just what it is you have in mind, of course.

Mr. Royall: I think I have really finished with this witness and I was just taking up the argument that my friend presented, and at this time I am simply answering his question. I think the witness answered my question, however. There is something that I omitted in this chain, if your Honor will permit me.

The Court: All right.

Plaintiff offered in evidence a photostatic copy of a draft drawn by the Citizens National Bank of Washington, Pa., upon the Equitable Trust Company of New York, for $647,000 under date of April 1st, 1930. On the back it shows that it was paid on April 9th, 1930.

Mr. Hirshfield: I object, not on the ground that it is a photostatic copy, but on the same ground of incompetency.

Mr. Royall: All the way through, I told you that I would concede that you have a general objection to all of this testimony.

Mr. Hirshfield: I am not objecting on the ground that it is a photostatic copy, but on the previous grounds stated. [fol. 95] The Court: Yes, you may have an exception.

Mr. Royall: I offer it in evidence.

(Marked Plaintiff's Exhibit No. 20.)

Similar drafts were drawn by local banks in and about the Pittsburgh region with respect to the escrow arrangements covering the balance of the purchase price involved in the nine transactions.

Cross-examination.

By Mr. Hirshfield:

There is no question that those people who sold the property, who made the contracts with Kingston, received every cent of the money that they bargained for or expected to get.

Subsequent to the making of my contract with Kingston Corporation, the drilling on my property netted a seven million foot well. That was a very good well, among the best brought in in recent years. That was on my farm.

By Mr. Hirshfield:

Q. At the time you made the contract, you were drilling that well?

A. Yes, sir, I had already signed the sales agreement.

Q. And it was brought in subsequent——

A. Subsequent to the signing.

Q. So at the time that this contract was made, your property had a value of x dollars, we will say?

A. Yes, sir.

Q. On April 9th, did it or not have added value by reason of bringing in this tremendous well?

A. In my opinion, no, because in those reserves that was admitted as being there.

[fol. 96] Q. In other words, you were so certain ahead of time——

A. I didn't put those figures on it.

Q. Ever gotten a dry well, Mr. Nuss?

A. Yes, sir, certainly.

Q. So when you say that they were calculated in advance, you know that calculations are one thing and the actual bringing in of a tremendous well of that sort is another thing?

A. That is a fact.

Q. You never bought or sold any properties except the sales of your own property that had wells on it?

A. I bought oil and gas leases.

Q. But without wells, unproven, wild-cat——

A. Just unoperated acres.

Q. Practically wild-cat acreage, or would you say unproven, is there a distinction?

A. There is, in my opinion.

Q. But you had not had any experience in buying and selling any proven wells?

A. Except in my own use.

By the Court:

Q. Is a proven territory that which lies in certain off-set wells?

A. I would make a distinction there, yes.

Q. Wild-cat territory is a new territory, is that it?

A. Where there is nothing drilled or anything disclosed to indicate that there might be gas or anything.

Q. You testified before that you first met Mr. Reuter in, I think you said, January or February of 1930?

A. Yes, sir.

Q. Is it not a fact that when you met Mr. Reuter he had already acquired a number of properties in that section?

A. Yes, I had.

Q. That he had already made contracts for a number of [fol. 97] properties and worked in that section for a considerable length of time?

A. Yes, he told me that he had already signed up some properties.

Q. You testified before that—taking the first one I come to,—here is a contract dated December 27th, 1929, does that refresh your recollection as to anything Mr. Reuter may have said as to how long he had been working on this proposition?

A. I cannot say that it does at this time. I just remember that he told me that he was acquiring other properties in the Pittsburgh territory.

Q. And had already acquired some?

A. I don't know that he said he had,—I think he said he had signed some agreements and options.

Q. As a matter of fact, you now know that he had, previous to the time he met you, acquired various options?

A. Options, yes.

Mr. Hirshfield: That is all.

Redirect examination.

By Mr. Royall:

Q. I am a little at a loss, so I will ask my friend, to be sure, whethert you contest the qualifications of this witness as an expert?

Mr. Hirshfield: I did before and I do yet.

By the Court:

Q. You were born and raised in that country out there?
A. Yes, sir.
Q. Oil and gas have been produced there since you have been there, is that right?
A. Yes.
Q. When did you start getting up these leases?
[fol. 98] A. I have been interested in leases since 22, more or less, with my father.
Q. He was in the oil and gas business?
A. For forty years.
Q. And you traveled about the country with him?
A. Yes.
Q. You know Sam Flannell and Andy Flannell?
A. I know them.
Q. And the relation they bear to the gas producing territory?
A. Yes.
Q. And oil?
A. Yes.
Q. And you have, over that period of years, gone around through the country and taken up leases on various properties or farms?
A. Which I subsequently drilled.
Q. Which you subsequently drilled; did you ever sell any of those leases to Pittsburgh people, to Carnegie or the manufacturers there?
A. No, sir.
Q. Do those leases have a value, as a sort of market through Washington, Greene and Alleghany Counties?
A. As I said before, a dollar or two and in some cases more than that.
Q. In a farm lease next to a producing well, as compared to one in new territory?
A. The acreage would be higher.

Q. And those prices are quoted around the neighborhood, are they not?

A. Exactly so.

Q. Do you keep yourself informed as to the market for oil and gas leases?

A. I do.

Q. Are you yourself competent to pass judgment upon values of leases and of wells?

A. I am.

Q. What value do you ordinarily give to a producing well of a million feet?

A. That is determined by the contract price of the gas. It is possible to determine the total value of flow from a [fol. 99] well, there is a method of doing that, and you are able to estimate the future earnings of the well and arrive at the value of the producing well.

Q. That is well known among gas and oil people?

A. It is known among all engineers—I don't know whether oil and gas.

Q. You have in Pennsylvania a group of men known as oil and gas speculators?

A. We have.

Q. And they trade leases back and forth among themselves and sell them to producing companies?

A. They do.

Q. And the market for those leases depends from time to time and varies, I take it, upon industrial conditions and the amount in production that a company may have at a particular time?

A. Yes.

Q. That is, if the manufacturer has come of its production and wants new leases——

A. If they want new leases, they are willing to buy and pay for those leases.

Q. So is it upon your information that you have gained from your association with your father, and your own experience that you have gained your ideas of the values of these properties?

A. It is through my engineering in addition to the other part.

By Mr. Royall:

Q. You might bring out the additional fact that you have said before that you became active in association with your

father in the business of acquiring and developing gas leases that you also practiced your profession as an engineer?

A. I did.

Q. For a period of about ten years?

A. I did.

[fol. 100] By the Court:

Q. What sort of engineer are you?

A. I have done structural work, road work, building streets, sanitary engineering——

Q. Have you done any geological work?

A. I have studied geology at school.

Q. Have you studied the geology of the oil and gas sands?

A. I have.

By Mr. Royall:

Q. Is it a fact that you were employed from time to time during your engineering career to make surveys of lands for geological purposes such as coal or otherwise in the Alleghanies?

A. I have made geological surveys for coal for the Pittsburgh Coal Compan .

Walter C. Krog, called as a witness by the complainant, testified as follows:

I was formerly employed by Furlaud & Co. with offices at No. 52 Wall Street, New York City, They were bankers engaged in the business of issuing and making publications of securities from time to time.

I am an engineer. I studied at Wisconsin Mining School. Ralph E. Davis was head of the school when I was there; I am a pupil of Ralph E. Davis. I came into the employ of Furland & Co., Inc. about October 15, 1929, and part of my work was to go when I was sent by Mr. Furlaud and Mr. Reuter to make investigations, as an engineer, of properties that they were considering handling.

[fol. 101] Early in 1930, I went to Pittsburgh to investigate and report to them in respect to the properties which were later acquired by the Duquesne Gas Corporation.

I first went there in the middle of December, 1929, with Mr. Schuler, who, I believe, was a financial man and assistant to Mr. Reuter, in the employ of Furlaud & Co., Inc. We had been presented with reports which had previously been made on various properties there, and we then just made a rough and casual survey of these properties. They were the Trafford Coal & Gas Co. and the Campbell Gas & Oil Company properties which were acquired by Duquesne. Ralph E. Davis furnished us with the reports. I next went to Pittsburgh some time in January, 1930, with Mr. Schuler. Mr. Reuter joined us there soon thereafter, and during the month Mr. Halporn joined us; he is one of their financial men.

Mr. Reuter asked me to refer engineers to him who would make a survey for Furlaud & Co. of any properties under option, and I recommended the firm of Ralph E. Davis and arranged for a conference between him and Mr. Reuter. I introduced Mr. Davis to Mr. Reuter. In January, 1930, I was informed by Mr. Reuter that he would employ Ralph E. Davis.

I met a Mr. Robbins who is in the employ of Ralph E. Davis at his Pittsburgh office, and he was delegated by him to take charge of the appraisal work. I attended with him in the field while he was making his examinations of the various properties. A Mr. Henderson and Mr. Jones and Mr. Stevens also assisted him.

While this appraisal work was going on, I was daily in touch with Mr. Robbins and his assistants and getting daily reports.

[fol. 102] The time came when some reports covering five of the properties, and aggregating an appraisal of $1,700,000, including working capital, were rendered by Mr. Davis. This was about the first of February.

Q. I understood you to say that he (Davis) was engaged to report upon all nine of the properties?

A. I don't know what the agreement was with Mr. Davis.

I observed Mr. Davis' staff getting data from the properties.

During this time I often had interviews with Mr. Reuter. I believe he got reports as to the progress of the work from Mr. Davis' office more directly than from me.

Mr. Reuter talked to Mr. Robbins and to me about the progress of the work.

At about February 1st, under Mr. Reuter's instructions, I went to Mr. Robbins, and received the working papers that he had concerning the properties as to which appraisals had not been rendered, and gave them to Mr. Reuter.

Mr. Reuter and Mr. Davis had had arguments. I don't know the extent of it, but Mr. Reuter was extremely angry; talked over the telephone, hung up the 'phone on Mr. Davis and was later called to Mr. Davis' residence, and came back and asked me whether I could refer another engineer to him.

Mr. Reuter said that he felt that Mr. Davis would not give him the values which Mr. Reuter would consider fair values. Appraisals of certain properties had been completed and the wells testified and those figures were given, but there was so much information that had not been completed, that a full value could not be received, and I know he was dissatisfied with the results so far obtained. I don't remember any conversations as to what was arrived [fol. 103] at, whether it would indicate a million dollars or eight hundred thousand dollars, or anything of that sort.

Mr. Reuter called me to suggest another engineer, and asked me to get the working papers away from Mr. Robbins. I got them. I don't think I told Mr. Robbins that his firm was discharged, and I was not instructed to tell him.

I suggested to Mr. Reuter that some one else be employed, such as Brokaw, Garnett, Dixon & Mackay and Ford, Bacon & Davis.

Mr. Reuter told me that one of them was being retained by other parties for work in Pennsylvania, and could not be had, and I don't just remember, but he did not want the other one. I don't remember which was which. I told him that those two firms with Mr. Davis were the three nationally known gas and oil engineers that had been prominent in previous financing, and that I knew of no other nationally known engineer who had been prominent in the Street or in any financing.

He then asked me to suggest another engineer, and I naturally suggested to him my previous associate, Mr. C. S. Conrad of Mattison, Davey & Winters, who at that time was in Houston, Texas, and Mr. Reuter asked me to call him long distance that night, which I did. He came immediately to Pittsburgh and I introduced him to Mr.

Reuter, and evidently they came to an agreement, for Mr. Conrad was retained to finish the work.

I went with Mr. Conrad day by day in the field, and gave him all the assistance I could. Mr. Conrad had no staff then, besides himself. I don't know whether Mr. Conrad had ever acted as an appraiser or engineer in the Alleghany field. I did not ask him. I knew him well, but I had not [fol. 104] known him all my life or all of his. He had been the chief engineer for Mattison, Davey & Winters for several years and, I would say, had done work in the mid-continent field, chiefly.

In the course of two or three weeks during the latter part of February, he produced the appraisal of $5,100,000 for the four other properties. I worked with him while he was making up his appraisal. In some instances he used the Davis material.

There were continuous arguments as to the values being arrived at. I knew there were talks and argumeuts about the speed. I cannot definitely say that I know more, but Reuter was constantly after all the value which we could give him within engineering principles.

I became Vice-President of the Duquesne Gas Corporation before the closing on April 9th. As I recall, I was told by Mr. Halporn of this fact after I became Vice-President. I executed all of the $4,000,000 bonds and $1,000,000 notes as Vice-President on April 7th. Mr. Halporn informed me that we were going to sign the bonds. I had never done anything like that and I was a little reticent about doing it, but I was assured that it was perfectly all right and legal. Mr. Halporn signed as Secretary. We signed the bonds at a signature company, 25 bonds at one time. I did not know anything about corporate proceedings. As far as I can recall, it was the thing that I was asked to do, as vice-president. I signed the notes. I suppose there were a million dollars notes.

I was instructed by Mr. Furlaud and Mr. Reuter to attend at the Central Hanover Bank & Trust Company on the morning of April 9th.

On April 9th, there were present at the closing Mr. Furlaud, Mr. Reuter, Mr. Halporn, myself and a vice-president [fol. 105] of the Central Hanover Bank & Trust Company, Mr. Osborne, and Mr. Duke, who is one of the law firm of Chapman & Cutler, legal advisers. There may have been

others. There were bonds and notes in the cage which looked like the bonds and notes I had seen the day before.

Several papers were placed before me to sign. I started to read them over; Mr. Duke informed me that it was all a matter of form; that it was all right to go and sign anything they placed there and I did so, without reading the papers.

After these papers were signed, we were moving around freely in the room. Mr. Halporn was in the cage, and there was a queue of runners coming from the elevator to the cage with checks or amounts to take up the bonds and notes subscribed and after it was given them they left. The queue in the elevator consisted of about fifteen to twenty men at a time.

The closing lasted from the morning until the middle of the afternoon, up to about three o'clock, I imagine.

Cross-examination.

By Mr. Hirshfield:

I worked with the man from Mattison, Davey & Winters to a great extent, and except that he was the man in charge, and I was working subject to his approval, this report of Mattison, Davey & Winters was as much my work as the work of the man who signed it. I did the work that he asked me to do only. I did not discuss questions of value with Mr. Conrad.

Q. First, who is Mr. Furlaud?

A. Mr. Furlaud——

Q. In connection with this matter. I am not asking for his family history or anything of that kind.

A. What do you mean?

[fol. 106] Q. What relation did he have with Furlaud & Company?

A. He was just a member of the firm of Furlaud & Company.

Q. You had very much to do with him in this deal?

A. Very little to do with him.

Q. Did you see him practically every day in the office?

A. Not for any talk in the office.

Q. Who is Mr. Reuter?

A. Mr. Reuter was another member of Furlaud & Company organization.

Q. You understand, of course, that Furlaud & Company is a corporation?

A. A corporation, yes.

Q. Then may I amend your answer to the extent of saying that Mr. Furlaud was an officer of the corporation and Mr. Reuter was an officer of the corporation?

A. I believe that is so, yes.

Q. Who is Mr. Halporn?

A. To my knowledge, he was an employee of the corporation.

Q. Who was Mr. Schuller?

A. Also an employee of the corporation.

Q. And I understand you were an employee of the corporation?

A. Correct.

Q. At this closing, you said that Mr. Duke was present; who is Mr. Duke?

A. Mr. Duke is a member of the organization of Chapman & Cutler.

Q. And they are employed by Furlaud & Company?

A. Right.

Q. So that everybody at this closing was an employee or officer of Furlaud & Company?

A. With the exception of the bankers.

I have no knowledge whether the checks given to the queue of runners were checks made payable to the Central Hanover Bank & Trust Company or to Furlaud & Company. I did not see them. I saw notes and bonds handed out. I could not distinguish the notes from the bonds.

[fol. 107] Eugene P. Brady, called as a witness by the complainant, testified as follows:

I was formerly employed by Furlaud & Company. I was a member of the sales organization, and in charge of the Middle Western Distribution. My particular duties were to obtain commitments from other dealers who were members of a distributing group, and I had something to do with organizing the distributing group for the sale of bonds of the Duquesne Gas Corporation.

Plaintiff offered in evidence Plaintiff's Exhibit No. 21.

Plaintiff's Exhibit No. 21 is a distributing group letter emanating from the office of Furlaud & Company, which was

sent to about 500 dealers throughout the country. There were two groups—one known as a distributing group, and the other a banking group. The banking group consisted of about five members, and the distributing group of about thirty. The distributing group consisted of retailers who took the bonds for retail distribution, and were located all over the United States.

Plaintiff offered in evidence Plaintiff's Exhibit No. 22, being an advertisement emanating from the office of Furlaud & Company.

Plaintiff offered in evidence Plaintiff's Exhibit No. 23, being a circular distributed by Furlaud & Company with the distributing group letter which was given to any runner on the Street who came and asked for it. The circular was released for general distribution publicly, and ample sup-
[fol. 108] plies of these circulars were sent to the distributors.

(Objections were made to the introduction of Plaintiff's Exhibits Nos. 21, 22 and 23 on the ground that they were not binding upon the defendant Maxine H. Furlaud personally. Objections overruled, and exceptions taken.)

A previous circular which, however, was not distributed amongst the dealers as far as I know, did not segregate the two appraisals by Ralph E. Davis and Mattison, Davey & Winters. The appraisals were presented as a joint appraisal. These circulars were not distributed among the dealers so far as I know, but were destroyed.

Q. Did Furlaud & Company have anything to do with the issuance of this one million dollar advertisement of Duquesne Gas Corporation (document submitted to the witness)?

A. In an indirect way.

Q. Did they cause this advertisement to be inserted?

A. Indirectly. I should say offhand that Cullen & Drew put the advertisement in.

Q. It is signed here by Furlaud & Company, Inc., and Cullen & Drew.

A. Yes, sir.

Q. As a matter of fact, the whole issue was turned over to Cullen & Drew to manage the distribution of, wasn't it?

A. I understand the note issue was sold to Cullen & Drew.

Q. Cullen & Drew did the distribution of it?
A. Yes.

Mr. Hirshfield: I object to that. The witness has answered, and answered correctly, that the issue was sold to Cullen & Drew, and now Mr. Royall asks him if they had the distribution of it.

[fol. 109] By the Court:

Q. Do you mean to say they bought and sold this issue in this advertisement?
A. Yes; your Honor, they bought that and sold them.

By Mr. Royall:

Q. The issue was publicly shot—you know what I mean by that,—was publicly announced by Furlaud & Company and Cullen & Drew, wasn't it?
A. Yes.

Mr. Royall: I offer this advertisement in evidence.
Mr. Hirshfield: I object to it as not binding on Furlaud personally and on the ground of irrelevancy.
The Court: All right.
Mr. Hirshfield: Exception.

(Marked Plaintiff's Exhibit No. 24.)

Plaintiff's Exhibit No. 25, a circular with reference to the notes, was then offered in evidence. (Objection was made to its introduction in evidence upon the ground that it wasn't binding upon the defendant Maxime H. Furlaud personally. Objection overruled, and exception taken.)

Q. Now, I notice that upon Exhibit 23, the circular as to the bond issue, there is a blank space at the bottom of the third page.
A. Yes.
Q. Is there any custom about doing anything with that blank space?
A. These circulars which are distributed to members of [fol. 110] the group at their request, and are without an imprint in that space——
Q. It contains the imprint, doesn't it, of the banking house of issue and of the distributing house—that may be the distributing house who has that particular circular with that imprint, isn't that the custom?

A. Yes, at first this is printed in blank.

Q. Yes, it is printed in blank, then you print the name of Furlaud & Company, then you put on the name of the San Francisco dealer who was the distributor in one case—I don't care whether you use San Francisco, St. Louis, Chicago, but a dealer——

The Court: I understand, you put the name of some house on.

The Witness: Yes.

Q. With Furlaud's name, then you would print them up that way, is that right?

A. No, that is not exactly right. Furlaud's name would not go on it.

Q. Wouldn't any name go on as the banking house of issue?

A. No.

Q. None of the banking house names of issue would go on the circular?

A. Not to the distributing groups.

Q. This circular was sent to the distributing group, wasn't it?

A. Yes, sir.

My business was to obtain commitments from members of the distributing group, and the objective of my activities was to get a lot of distributors to give commitments.

Q. Was this issue subscribed for?

A. Not fully.

Q. To what extent?

A. That I would not know, but I should say somewhere [fol. 111] in the neighborhood of 75 to 80%.

It was the custom to sell to the distributing group members with the provision that any of the original bonds that were re-sold or picked up in the market should be delivered to them at the original price. This had the effect of retaining the original offered price.

The bonds were traded in on the Curb.

The managers of the syndicate did not have to take in their bonds in order to maintain the market in the market operations following the issue because the bonds were convertible into 80 shares of stock, as I remember, at $15.00 a share, and the stock, as I remember at the time, was quoted

in the neighborhood of $14 or $15 which immediately made a market for the bonds in the neighborhood of, I think, around $109. I am not positive of the exact figure. I have no knowledge as to whether Furlaud & Company, Inc., took a position in the market on the bonds.

I had nothing to do with the organization of the secondary distributing group for the bond issue.

Plaintiff's Exhibit No. 26 was offered in evidence. (Objection made to the introduction of Exhibit 26 on the ground that it is not binding on the defendant Maxime H. Furlaud personally. Objection overruled, and exception taken.)

Cross-examination.

By Mr. Hirshfield:

Every commitment I obtained, and every arrangement or sale I made was an "as, if and when issued" basis.

[fol. 112] HARRY J. STEELE, called as a witness on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Royall:

I am Secretary of the Duquesne Gas Corporation; I am now in the employ of the Receiver, and I am familiar with its records and books.

These five bound books are the minute books of the corporation.

The Court: They may be considered in evidence as subject to the right of either party to quote from them as you see fit. Why not put them in evidence? They won't have to be printed in the case of an appeal and either side can read into the record any portion of them that he thinks is material to his case.

Mr. Royall: I do not care to offer them in bulk in evidence, and then be bound by everything that is in them whether material or not.

The Court: As a matter of convenience, I will consider the books of the corporation in evidence for the benefit of both parties.

(Marked Plaintiff's Exhibit No. 27, consisting of five books.)

Plaintiff's Exhibit No. 28 offered in evidence is an original check of the Duquesne Gas Corporation drawn to the order of the Central Hanover Bank & Trust Company in the sum of $3,015,000 under date of April 9th, 1930, to satisfy a loan to Kingston Corporation.

[fol. 113] The records of the Duquesne Gas Corporation show the receipt by it on that day of a check from Furland & Company, in the sum of $3,379,500, and after charging to its account the check marked Exhibit 28, there was left in the account of Duquesne Gas Corporation, the sum of $364,500. There was already $500 in the treasury of the corporation that had been put there on the original issue of the 1,000 shares at fifty cents a share which came to the corporation May 3rd, 1930. So that the corporation had $365,000 in the treasury, together with the deeds to these nine gas properties that were conveyed to it.

The account books do not show that any amounts were received by the Duquesne Gas Corporation from the sale of bonds, notes or stock, except the properties and money aforesaid.

Cross-examination.

By Mr. Hirshfield:

On April 9th, 1930, $3,379,500 was deposited to the credit of Duquesne Gas Corporation at the Central Hanover Bank & Trust Company.

The minute books of the Duquesne Gas Corporation (Exhibit 27, at p. 70) indicate that an offer was made by Furlaud & Company to subscribe to 139,000 additional shares of the common stock of the Duquesne Gas Corporation at 50c a share, or a total price of $69,500 which offer was accepted.

It is conceded that the minutes of the Duquesne Gas Corporation say that.

I do not know who the stockholders of the Duquesne Gas Corporation were at the time that resolution was framed. I had custody of the books. Mr. Parisette is an employee of Furlaud & Company. I don't think he had any relation [fol. 114] with the Duquesne Gas Corporation at the time of the closing on April 9th.

Mr. Steele excused.

THOMAS W. DUKE, called as a witness on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Royall:

I am an attorney and counsellor at law, admitted to practice in the State of New York. I am a member of the firm of Chapman, Snider, Duke & Radebaugh, whose correspondent counsel in Chicago is the firm of Chapman & Cutler.

I was counsel for Furlaud & Company, took charge of the legal procedure of the organization of the Duquesne Gas Corporation, and the issuing of its securities, and I was the legal adviser of Furlaud & Company, in connection with the integration of the property and general financial corporate set-up of the Duquesne Gas Corporation. I was the Secretary of the Company, and the author of the minutes in its preliminary stages.

These minutes, consisting of three volumes, are the original minutes that were prepared while I was secretary. I don't think I recorded any meetings, but I was secretary of record. I recognize the handwriting of my associates.

I was familiar with this transaction which was carried on under my supervision as to procedural matters, and my firm also had charge of the examination of the titles to the constituent properties that were to be created into the corporation.

[fol. 115] Q. Those were nine separate purchases, weren't they, as you remember it?

A. There were more than that. There were nine separate purchases; then there were some other properties that had theretofore been acquired by Kingston Corporation. I don't know the particular properties, but the whole thing had gone into the general situation.

Q. Did you have anything to do with any of the properties excepting——

A. These nine are the basis.

The nine properties were the Byers, Trafford, Wynn, Garrison, Nuss, Behm, Wally and Campbell properties.

Our Chicago associates had charge of the examination of the titles. The men in the field were furnished by our associate counsel, Chapman & Cutler, and they were acting under

my general supervision; they also assisted in the preparation of contracts for purchase.

I think I drew one contract, the Wynn contract. My associates took care of and supervised all that work and drew the conveyances, and saw to it that the conveyances were executed by the sellers, and that the conveyances and the necessary accompanying documents had been lodged with several conveniently located banks in and about Pittsburgh in escrow, under an arrangement that the escrow depository or local bank was directed and authorized to deliver the deeds over to one or more of several named individuals after drafts drawn by them on designated New York banks for specified amounts have been honored.

These individuals were either members of my staff, or Chapman & Cutler's staff, down there in the field, and one was a member of the Furlaud organization, Mr. Schuller. [fol. 116] Mr. Schuller was not used. He was on my staff in case of an emergency, in case we needed him.

I did not know particularly who were in the selling group. I don't know who were in the Banker's group. So far as I was concerned, the closing would take place when the money would be available to effect closing. They got the money. I knew this was what was known as a public issue.

I arranged the advertisement, or rather I amended it. I possibly passed upon Plaintiff's Exhibit No. 21. It is quite probable that I did not go over these very carefully, because this is a set form which is copied from one by another, and they rarely refer them to counsel. This is a distributing group letter, it is routine work. The Banker's group is generally the keystone of the financial offer. There are three or four men who take the responsibility and this (referring to Plaintiff's Exhibit No. 21) goes to dealers.

There is a subscription blank at the bottom of the exhibit.

Mr. Hirshfield: Your Honor, there is no question in this case that they did not close this thing until they saw fairly well that they could dispose of these bonds, * * * there is no dispute about that.

Mr. Royall: I would like Mr. Duke's testimony on that. Will you read my question?

(Question read.)

Mr. Furlaud and Mr. Reuter were handling the situation, and they informed me that they would be ready to close on April 9th.

They did not tell me how they were acquiring the funds. [fol. 117] I knew how they were acquiring the funds for the actual mechanics of the closing.

Kingston Corporation had been organized some time before. I had no part in its organization.

My escrow sheets showed that in order to clear the nine escrows there would be $2,449,900 required. Mr. Halporn said that $3,015,000 was required, and we thereupon negotiated a loan in that amount. A loan was arranged for the Kingston Corporation at the Central Hanover Bank & Trust Company; it was a one day loan that became effective on the morning of April 9th. With the $3,015,000, Kingston paid the escrows amounting to $2,449,900 on April 9th. Kingston paid it by delivering a certified check to the Equitable Trust Company, in the sum of $804,000 which covered the Henderson Oil & Gas and Nuss escrows, which, in turn, were deposited with the local banks in Pennsylvania. The Nuss escrow was deposited with the City National, and the Henderson was deposited with the Pittsburgh Title & Trust Company. The Equitable Trust Company was the correspondent bank. Kingston delivered another certified check to the order of the Guaranty Trust Company, in the sum of $295,900, which covered the Gallagher and Campbell escrows, both of which were deposited with a bank at Pittsburgh. That was the aggregate amount specified in the escrows of those two-mentioned properties. The balance of $1,350,000 was made up of four drafts on the Central Hanover Bank & Trust Company covering the Degenther or Byers, Trafford Oil & Gas Company, Behm, Garrison and Wally escrows. They were in turn deposited with the First National Bank of Monongalia, Pennsylvania, the Pittsburgh Peoples Trust Company, and the First Bank & Trust Company of Washington, Pennsylvania.

[fol. 118] The $1,350,000, covering the drafts, was applied against the credit established at the Central Hanover Bank & Trust Company for Kingston.

Telegraphic notices were sent by each New York Bank to those correspondent banks notifying them of the acceptance of the drafts. I had received telephone calls from my as-

sociates as soon as they got word that the drafts were paid. Then each man sent me a telegram to the effect that the drafts had been paid and deeds delivered, and were proceeding to record the first and second mortgages, and they in turn were delivered after the deeds were delivered to them.

There were two separate indentures of mortgage—the first mortgage which was closed at $4,000,000 and the second general mortgage synchronized with the first as to its general provisions, but with different trustees, and then there were $1,000,000 bonds authorized, and these bonds, in turn, furnished the collateral for the secured notes. There was a third indenture collateral trust agreement. The first and second mortgages were in the hands of my representatives, and they were recorded at a moment's interval with the deeds.

I waited for confirmation word from my associates to know that the actual properties were in Duquesne Gas Corporation. I got satisfactory confirmation by telegraph and telephone from my associate that the deeds and mortgages had been filed for record.

My notes show that the balance of the loan obtained by Kingston Corporation was paid out by paying $300,000 to Furlaud & Company in accordance with an agreement between Kingston Corporation and Furlaud & Company for expenses that had been advanced by Furlaud & Company, and $250,000 was loaned to Furlaud & Company. I think [fol. 119] above figures were average; that did not particularly concern me in the closing. That was collateral to my problem.

Furlaud & Company negotiated an unsecured day loan in its own name at the Central Hanover Bank & Trust Company for $3,379,500; the $4,000,000 of bonds and $1,000,000 of notes were physically at the closing; Furlaud & Company must have drawn and delivered $3,379,500 on that date to Duquesne Gas Corporation. Duquesne Gas Corporation, pursuant to the plan of reorganization paid to Central Hanover, in repayment of the Kingston loan, the sum of $3,015,000 after Duquesne had acquired its properties.

Until I was satisfied that the whole transaction was ready for completion I did not authorize delivery of the bonds. There was a number of runners there to take up the bonds when released. The entire amount of bonds and notes was

delivered to maybe Kingston and Furland & Co. but as to the distribution from this point I had no part.

The bonds and notes were both convertible into stock. The stock was of one class. Rather, the bonds were made applicable to the purchase of stock the corporation had reserved under contract arrangement. There was no specific law in Pennsylvania as to conversion privileges, so we made the bonds applicable to the purchase, in order to carry out the same intent.

In New York, you can have a convertible bond, a straight convertible bond by just turning it in and getting stock on it. In this case, we accomplished the conversion privilege by making the bonds applicable to the purchase of a specific number of shares, which had exactly the same effect as a [fol. 120] conversion and which made it just a technical compliance with the Pennsylvania law.

We had the authorized stock made available for the purpose. If a bondholder or noteholder saw fit to exercise his conversion privilege, the corporation was in position, at all times, to carry it out.

Q. Did these provisions cover the release of property from the mortgage?

A. Yes, sir.

Q. And the time did come, didn't it, when you were asked to advise the corporation upon the power to effectuate a release from the mortgage of any of the mortgaged companies' leases?

Mr. Hirshfield: I object to that as being immaterial and being outside the issues of the pleadings.

The Court: All right, go ahead.

Mr. Hirshfield: May I except to that?

The Court: Yes.

The Witness: I think Mr. Nuss wrote me, that is quite a while after the closing, I don't remember the date, and since I did not know that this was coming up, I did not bring that information with me, but Mr. Nuss informed me that there were various leases there—originally, I assumed would be drilled, and if not, required certain delayed rentals, and these rentals would impose quite a large burden on the corporation in the absence of building and he wanted to avoid the carrying expense. I went into it very carefully at the time and wrote a letter or helped draft a letter, which

Mr. Nuss sent to the Trustee, notifying him of the action that he intended to take.

[fol. 121] Q. Was this a voluntary release? Was this property to be released without any consideration?

A. I think they were released without consideration.

Q. Do you remember what the properties were, that were released?

A. I don't know. Mr. Nuss told me that some properties were hurting him to carry.

Q. In other words, the properties were a liability instead of an asset, is that it? A. All gas properties are, until they are drilled—not that I am an expert on gas properties, but that is what I have been told.

Q. Did you say the thing was presented to you at the time as a practical matter to deal with?

A. Yes.

The net result of the closing was that $2,449,900 got furnished on that day to the escrow banks, and $365,000 or $364,500 of working capital got furnished to the Duquesne Gas Corporation, and the Duquesne Gas Corporation got deeds of nine properties, and others too. A mortgage securing the $4,000,000 of bonds and a second mortgage securing $1,000,000 notes got recorded, the bonds and notes referred to got issued, and 674,000 shares of stock were issued; 1,000 shares had been issued prior thereto. All of these bonds and all of these notes and stock came to Furlaud & Company or Kingston Corporation. Furlaud & Company, Inc. on that day received at the closing a sum of money the amount of which I do not know. On that day, the aggregate that went into the corporation translated into dollars and cents was $2,449,900 representing the taking up of the escrows, and $364,500 representing the amount of cash left in the Duquesne Gas Corporation.

[fol. 122] In addition to the nine properties that were mentioned before, there were some other properties that were in Kingston or to be taken by Kingston by one of my associates, and he said certain leases were deposited as collateral with John Jones and Val Aitcheson of Washington, and I remember that certain acreage known as the Stybr-Watson leases were acquired from us by Kingston, I believe.

It is a long time ago, and I do not remember the properties. I do not know the basis on which Duquesne Gas Cor-

poration got the Stybr-Watson property; there were some other properties, besides Stybr-Watson, known as Levier, Tucker, White, Wade and Watson properties. I do not know whether my men made an examination of the titles of these properties. The details of the examination of the titles were in each case made on developed leases. It was customary in the gas business not to make an exhaustive examination of undeveloped property. I do not know whether an examination of title was made of this Stybr-Watson property and the other properties.

Cross-examination.

By Mr. Hirshfield:

The check for $3,379,500 paid by Furlaud & Company to Duquesne Gas Corporation, was in payment of the principal amount of the first mortgage bonds at 90, which was $2,430,000, and $1,000,000 of convertible notes at 88 or $880,000, and 139,000 shares of common stock at 50c a share or $69,500.

Q. Now, Mr. Duke, when this property was originally taken over in the early spring of 1930, as I understand it, [fol. 123] these various properties taken over had, in the opinion of the appraisers certain values. Do you know anything at that time of the business conditions in Pittsburgh?

Mr. Royall: I would hardly think this witness was an expert on business conditions; he is just a lawyer.

Mr. Hirshfield: Inasmuch as Mr. Royall has brought up what I consider an utterly irrelevant point about the release, I thought I had the right to show that in the course of the year 1930—and possibly the Court will take judicial notice of the fact—that we were in the midst of what has been commonly known as the depression and the business conditions around Pittsburgh changed very radically.

The Court: I suppose he knows about the conditions there.

The Witness: They were pretty bad.

Mr. Royall: Are you calling this witness to have him tell the Court that there has been a depression in the United States? I will concede that.

Mr. Hirshfield: That is the first concession I have had from you.

Duquesne Gas Corporation was organized on February 21st, 1930, with a capital of 1,000 shares of stock, without par value; the shares wer purchased at 50c a share by Furlaud & Company, or their nominees or dummies..

The capital of the corporation was thereafter increased, and Furlaud & Company subscribed for an additional 139,000 shares at 50c a share. This stock was paid for and issued on April 9th, 1930. Kingston Corporation was a New Jersey corporation, formed some years before.

[fol. 124] On April 7th, 1930, Kingston Corporation and Duquesne Gas Corporation executed an agreement, designated as an agreement of reorganization, which was offered in evidence, and marked Defendant's Exhibit A.

Q. Will you give us the substance of it?

A. Kingston would asquire the properties described in Schedule A annexed to the agreement, these properties being——

Mr. Royall: Has a date been ascribed to this agreement?

The Witness: Yes, April 9th.

Mr. Royall: 1930?

The Witness: Yes. The properties referred to in the schedule were in turn further identified by four separate reports by various engineers, but they were so voluminous that they could not be put into the record. Kingston agreed to acquire these properties and agreed to cause these properties to be transferred and assigned and conveyed to Duquesne Gas Corporation, thus transferring to Duquesne Gas Corporation substantially all of its assets and Kingston agreed to pay all charges and expenses of auditors, counsel, engineers and brokers incurred incident to such acquisition.

Kingston represented that it would be obligated to Central Hanover Bank & Trust Company in the sum of $3,015,000, and in order to effect the reorganization and transfer of assets, Duquesne agreed to pay this obligation upon being assured to their satisfaction that the properties had [fol. 125] been transferred and assigned and conveyed to it. Also upon such assurance to Duquesne, Duquesne agreed to issue to Kingston 535,000 shares of its common stock without par value, together with $1,300,000, principal amount of Duquesne first mortgage 6% convertible gold bonds.

Then Kingston agreed that it would waive any right to subscribe inherent in these shares. Then it is stated that the delivery of the shares and bonds of Duquesne, shall be conclusive evidence of the acceptance by Duquesne of the properties mentioned and shall release Kingston from any and all responsibility with respect thereto, provided that any and all charges which may be made with respect to drilling expenses and of accrued income up to the date of the acquisition of such properties by Duquesne shall be paid by Kingston.

Kingston further agreed that it would pay and reimburse to Duquesne the amount of any and all fees and taxes for organization and of qualification of Duquesne.

The minute book of Kingston Corporation shows that the signing of the said agreement was approved by the Board of Directors.

Q. Do you know, of your own knowledge, on April 9th, 1930, who was the owner of all the issued and outstanding capital stock of Duquesne Gas Corporation? Have you got any stock books here? I think you said you found them.

A. Yes, I have found them. My records show that they were paid for, that is the 139,500 were paid for on that date by Furlaud & Company, Inc. and that the balance of [fol. 126] 535,000 were issued to Kingston Corporation pursuant to the plan of reorganization.

Frank A. Cabeen, Jr. was an employee of the United States Corporation Company of Philadelphia, the firm which performed the corporate services, at our suggestion, for the benefit of Furlaud & Company.

Lee Perot, Jr. was affiliated with the same corporation, and so was B. Rach. That concern furnished incorporators for us, and they were the original three incorporators, furnished to assist us in forming Duquesne Gas Corporation. All were nominees of Furlaud & Company.

F. L. Parisette was an employee of Furlaud & Company and his name was used as the "Street Name" for the Duquesne Gas Corporation stock belonging to Furlaud & Company.

To the best of my knowledge his only interest in the transaction was as representative of Furlaud & Company, Inc.

By Mr. Hirshfield:

Q. On the 9th day of April, Mr. Duke, I am informed that certain loans were negotiated by Furlaud & Company, Inc. with the Chatham & Phenix National Bank in the sum of $700,000, with the Hibernia Trust Company in the sum of $300,000 and the Pacific Trust Company in the sum of $500,000, or a total of $1,500,000; do you know anything about those transactions or those amounts?

A. I could not be absolutely certain about this. I have [fol. 127] some papers that indicate loans like that.

Q Will you look at your papers and see if they refresh your recollection and tell us what you know about that?

A. I just had a carbon, I think, of a letter, giving the collateral security to them—I do not have the original and I could not testify with any degree of certainty, but I have pencil notes that Furlaud & Company was to receive $700,000 from the Chatham & Phenix National Bank, $500,000 from the Pacific Trust Company and I recollect a certain amount from the Hibernia, but I haven't any figures on that because it did not specifically concern me.

Q. I can show that from somebody else, so I won't bother you with that—only one thing more. No bond and no note was released by Duquesne Gas Corporation to Furlaud & Company or to Kingston Corporation, as I understand you to testify until you had been completely satisfied that these bonds were completely and validly issued by Duquesne Gas Corporation in accordance with the plan of the reorganization which you had drawn up?

A. Yes. May I amplify that?

The Court: Yes.

The Witness: You said they were not released until they were validly issued. They were not released until I was certain first, that every property that was contracted for had come in and its title was cleared. Second, that Duquesne in its treasury in cash $365,000 to make it responsive to the circular, and at that point, I released the bonds.

[fol. 128] By the Court:

Q. Assuming them valid?

A. Yes, sir.

Mr. Hirshfield: That is all.

Redirect examination.

By Mr. Royall:

Q. Did you complete your explanation about your answer to the last question?

The Court: He qualified it and said that he assumed it was valid at that time.

Q. There was read in the question, according to the plan of reorganization, and I call your attention to that, and I will ask you do you mean to say that you waited to be satisfied about anything else than that the properties had been conveyed and the mortgage recorded and the $365,000 put in the treasury, and that is all you wanted before you rang the bell to proceed, is that right?

A. Yes.

Q. You did not know whether Furlaud & Company got the money to provide for those two things just mentioned, namely, the release of the escrows to get the title and for the $365,000 in the treasury, you don't know whether they got that money wholly from bond subscriptions taken up on that day or partly from some loans they made or may have made that day or where the money exactly came from, is that right?

A. No, so far as I was concerned, that money was a day loan from the Central Hanover Bank & Trust Company and placed under my supervision to clear the transaction. That was a loan. How that loan was repaid I am not in position to say.

[fol. 129] Q. You don't know?

A. No, sir.

By Mr. Hirshfield:

Q. That was the money that was used?

A. Yes.

By Mr. Royall:

Q. Your chief function and your great concern was to have your own counsel, which was referred to in this bond issue, justified?

A. Absolutely.

Q. And that opinion, in order to be justified, had to have lying under it the accomplished fact of the filing of the

mortgage for record and the payment of the $365,000 cash into the treasury of the corporation?

A. And the acquisition of the properties which the engineers had appraised. It had to be those specific properties.

Q. Those specific properties, and the subjection of those properties to the mortgage,—I intended to include that.

A. Yes.

Q. That was your concern?

A. Yes.

Q. And you were concerned about that, because that was a public issue?

A. Yes.

Q. And in which the opinion of your firm was referred to, as counsel?

A. I stated that all matters were under our supervision.

Randolph C. Coleman, one of the original subscribers to the stock of the Duquesne Gas Corporation, and a director and officer of that corporation, was an employee of my office, and could be called a nominee or dummy for Furland & Company, Inc.

McLane Tilton, a director and officer of the Duquesne Gas Corporation, acted in the same capacity.

[fol. 130] Redirect examination.

By Mr. Royall:

The circular issued stated that there was $365,000 in the treasury of the Duquesne Gas Corporation, and that is what I had to have, that exact amount.

I only made an exhaustive examination of titles of properties which were actually being operated. The detailed examination was more general as to unoperated properties.

Herbert J. Osborne, called as a witness on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Royall:

I am Assistant Vice-President of the Central Hanover Bank & Trust Company.

On April 9th, 1930, we made a loan of $3,337,500 to Furlaud & Company, secured by the bonds and the notes of Duquesne Gas Corporation.

We made an unsecured loan of $3,015,000 to Kingston Corporation, and that was cleared off at the same time. The loans to Kingston Corporation and to Furlaud & Company were made at the request of Mr. Furlaud. The loan of $3,015,000 to Kingston was paid off with the check of the Duquesne Gas Corporation. The Furlaud & Company loan was paid off by a lot of certified checks of various banking houses drawn on New York banks.

At the closing, there was a delivery of bonds to a procession of runners against certified checks. I do not know the extent of delivery of bonds. I know that a good part of our collateral was delivered out when we got the certified [fol. 131] checks; certified checks were given to Furlaud & Company who endorsed them to our bank.

Kingston Corporation opened a bank account on April 5th, before they applied for the loan. There was a deposit of $29,500 on that day, and $3,015,000 thereafter. The transcript records payment on April 9th of $804,000, $295,900, $265,100, $300,000 and $1,350,000, so that the whole $3,015,000 was paid out on the same day.

The Bank always had a string on the money.

Edward S. Travers, called as a witness on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Royall:

I am head of the Incorporators' Department of the Manufacturers Trust Company, which became the Transfer Agent of the Duquesne Gas Corporation on April 26th, 1930.

Our original entry was made from a certificate made by Robert Halporn dated the 24th day of May, as of the close of business on May 15th, 1930, and it listed the stockholders of Duquesne Gas Corporation, certificates, and number of shares of each certificate. This showed that the certificates, aggregating 675,000 shares of the common stock of Duquesne Gas Corporation, were all registered in the name

of F. L. Parisette. On a certificate for 3,000 shares of the original 675,000 shares, the following stamp appeared:

"This certificate cannot be sold, transferred or delivered prior to March 26th, 1931, without the written consent of Furlaud & Co., Inc."

[fol. 132] Q. What are the certificates that it does appear on, subsequent certificates?

A. Subsequent certificates.

Q. We will have to go into those and see all about it. Were these subsequent certificates also issued in the name of Parisette or in somebody else's name?

A. They were originally issued in the name of Parisette and they were split up, as we call it, into smaller denominations, which were subsequently issued from the name of Parisette into other names, then back to Parisette in some cases. In other words, that was an account which varied greatly from day to day.

Q. See if I understand this. The certificates aggregating 675,000 shares were later split up into a large group of certificates representing smaller numbers of shares each and then this stamp was placed upon them in that form, that is the way it was?

A. Yes.

By Mr. Hirshfield:

Q. That was after May 15th?

A. Yes.

From May 15th, 1930 to October 1st, 1930, there were issued 4,300 one-hundred-share certificates and 4,000 less than one-hundred-share certificates.

Roger A. McShea, Jr., called as a witness on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Royall:

I am an accountant employed by the Pennsylvania Public Service Commission, and I was sent to the office of Furlaud & Company, New York City, for the purpose of getting data

[fol. 133] and reporting to the Commission the facts concerning the issuance of the securities of Duquesne Gas Corporation. I conducted an examination at the office of Furlaud & Company from July 20, 1931, to July 24, 1931. I have some notes in condensed form concerning the operation of the bond syndicate after the issuance and the marketing of the bonds which I took from the books of Furlaud & Company, Furlaud Reuter & Company, Kingston Corporation and Byron Corporation.

Q. Do those records show the acquisition by Furlaud & Company, Inc. of $4,000,000 of face amount in bonds?

A. Yes, sir.

Mr. Hirshfield: May I object to this question on the ground that the witness is only speaking from his notes.

Mr. Royall: I call upon you then to produce the books of Furlaud, Reuter & Company, Inc. Of course, this is going to take a great deal of time, but we will have to do that. We have subpœnaed the books.

The Court: Perhaps by consulting your working papers, you can pick out the spots where these are located.

Mr. Hirshfield: You may testify from the books here so that Mr. Royall may offer these books in evidence if he cares to.

Mr. Royall: I offer the books of Furlaud, Reuter & Company in evidence, all their account books, if that is what you want. I don't know what is in them, but I will offer them.

Mr. Hirshfield: Now, your Honor, may I interpose this [fol. 134] objection? Mr. Royall, in his various interlocutory motions, a number of times said that his theory of this case is the exact amount of profit made by these various people, was not a matter for this court, but was a matter for subsequent accounting. Remember, this complaint is for an accounting. At the very early start of this case, I made a motion to compel a more definite and certain statement of facts in the complaint, but I was met with the opposition and Judge Caffey denied my motion upon the ground that it was stated by the attorneys for the plaintiff that all that they were trying to show was that there was something due and that an accounting should be had and that the amount that they asked for, specifically the exact amount that we were supposed to be accountable for, and how it was taken, and they succeeded in evading that and

preventing our motion to dismiss on the complaint by the statement that all they were looking for was an accounting, so I submit, on that theory all this testimony is entirely irrelevant at this point.

The Court: I don't know what the purpose of it is.

Mr. Royall: This is a suit for an accounting. If we can prove here and now, and I think we can, what the trustees received—what these fiduciaries received, we have proved what the corporation got out of it, which we have to prove out of their own books, of course, what they received and your Honor could, if your Honor sees fit, make an inter- [fol. 135] locutory decree and appoint a Master, and all these books would be brought before the Master, involving great expense and delay in this Receivership, but I believe, your Honor, an hour or two more of examination and we will have all the facts and features before you, gotten right out of their own books.

He complains that we did not tell him the exact amounts they were accountable for. The Trustee knows what money was received. We don't know. We have to get it out of the records.

The Court: You want to show the profits they made out of this transaction?

Mr. Royall: We want to show the moneys they received, the amount they received out of the bond issue, and we claim they are accountable to us for that. That is our whole case.

The Court: What do you want to show now?

Mr. Royall: What money Furland & Company received from those bonds, notes and stock.

The Court: All right.

Mr. Hirshfield: Exception.

(Marked Plaintiff's Exhibits 29 and 30.)

Mr. Hirshfield: May I again renew my objection to this testimony? I did not have before me these documents this morning. Here is a brief which was submitted by my learned adversary on the original motion to make more [fol. 136] definite certain matters and his brief says that manifestly there is but one cause of action and manifestly this is a suit for an accounting, and so on.

Subsequently, there was a motion made by the plaintiff for leave to propound certain interrogatories which was

argued before Judge Woolsey. There was no objection to the first three interrogatories and Judge Woolsey allowed them. Now, my point of objection at this time is that we are not prepared, and do not expect to be prepared on this trial, because there was no notice to us to go into any testimony at all as to any expenses or any offset as against the testimony of what these proceeds were.

The Court: Until I know that there was something received by the defendants in this transaction, I have no basis of finding that there was fraud against them—I will allow it at this time.

Mr. Hirshfield: I will take an exception to your Honor's ruling and I will renew my motion later on.

From the working papers in my hand, I am prepared to testify as to what Furlaud & Company received from the sale of Duquesne Gas Corporation bonds. The books show the receipt by Furlaud & Company of $4,000,000 of Duquesne Bonds, and also various purchases of Duquesne bonds by Furlaud & Company. Additional purchases, over and above the $4,000,000 bonds, amounted to $1,194,000 par value, for which was paid on account of the purchase price, commissions, interest and so on, $1,309,662.76. The books [fol. 137] show that all of these bonds were sold for the aggregate amount of $4,941,333.80. The books show the receipt of $1,000,000 of notes. There were miscellaneous purchases of notes totalling $6,000, par value at a cost of $5,448.87. Furlaud & Company sold the $1,000,000 par value notes, and the $6,000 par value notes which they purchased shortly thereafter, for $886,546.56.

I also examined the books of the Byron and Kingston Corporation, as well as Furlaud & Company, but I did not examine the books of Chaucer Corporation. I was told that these books were in California.

Q. Were you able to analyze from the books of the Kingston Corporation, Byron Corporation and Furlaud & Company, any transactions relating to the disposal of the capital stock or any part of the capital stock of the Duquesne Gas Corporation?

A. Yes, sir.

Q. Will you tell us what your examination and analysis discloses as to that?

A. This is in connection now with the Byron Corporation. On June 4, 1930, the Byron Corporation sold 12,500 shares of Duquesne common stock to John J. Bergen at $10 a share and received on the same date cash in the amount of $125,000.

Q. All right, continue.

A. On June 5th, 17,500 shares were sold at the same price, and cash was received of $175,000.

On June 6th there was 12,500 sold at the same price and on that day there was received $125,000 in cash, making a total number of shares sold of 42,500, for which was received $425,000.

Q. All from Bergen?

A. All from Bergen; yes, sir.

[fol. 138] Q. Now, then, were you able to construct from any data in the books of Byron Corporation, Furlaud & Company and Kingston, entries relating to this stock, from which you could testify to any other transactions relating to the sale of the stock?

A. Of course, the sale of this stock to Mr. Bergen was covered by a joint contract by the Byron and Chaucer Corporations and this contract provided that Mr. Bergen would purchase this stock in various blocks at different prices according to the block, and as he purchased the stock, one-half should be sold by Byron and one-half should be sold by Chaucer.

Mr. Royall: I call on the other side to produce the agreement between Byron and Chaucer Corporation with Bergen, as described here by this witness.

(Document handed to counsel.)

Q. I show you a paper produced by the other side and ask you if that is the contract that you have just referred to?

A. I believe this to be the contract.

Mr. Royall: I offer it in evidence.

(Marked Plaintiff's Exhibit No. 31.)

Mr. Hirshfield: Your Honor, of course that is subject to the same objection, as well as all this line testified to by Mr. McShea.

The Court: All right.

Mr. Royall: The contract is rather long and the other side will correct me if I misstate the substance of it, with- [fol. 139] out the details. The substance of it is, it is a joint contract between one John J. Bergen and the Chaucer Corporation in the form of a letter to the Chaucer Corporation and Byron Corporation, a joint letter dated May 29th, 1930, signed Chaucer Corporation by Carl S. Reuter, President, and Byron Corporation by James P. Cleaver, President. It covers the sale of or grants the right to Bergen to purchase shares of stock of Duquesne Gas Corporation to the extent of 100,000 shares at $10 per share, or any part of these 100,000 shares at $10 a share and all or any part of an additional 150,000 shares at $12 a share, the contract performed equally by Byron and Chaucer Corporation, and appended to it is the following guaranty of performance:

Furlaud & Company, Inc. being greatly interested in the performance of the foregoing agreement and being desirous that John J. Bergen shall enter into this agreement hereby guarantees performance by the Chaucer Corporation and Byron Corporation under the terms and provisions of the foregoing contract.

Q. Now, in answer to my last question as to whether or not you were able to trace out of the books of Byron, Kingston and Furlaud any transactions by the Chaucer Corporation in respect of the sale by it of any of the Duquesne stock, and in answer to that, you referred to this contract, when I interrupted you to put the contract in evidence. Now, will you continue your answer?

A. Of course, when I was there at the time, not having [fol. 140] the Chaucer books available, I asked Mr. Parisette what the holdings of each of Furlaud & Company and Byron Corporation and the Chaucer Corporation were in the stock of the Duquesne Gas Corporation. He jotted a memorandum which I have now and he stated that Furlaud, Reuter & Company had 2,240 shares; Byron Corporation 174,200 shares and Chaucer Corporation 163,600 shares.

Incidentally, as far as Furlaud is concerned I think Mr. Parisette made a mistake in jotting this amount down, because I found out later that 2,240 shares was what was in

the box at the time I was there, and not what was charged in the investment account, but in the case of the Byron Corporation, I was able to verify the fact that Byron's investment covering the stock of Duquesne Corporation amounted to 174,200 shares.

Now, then, by duplicating the sales of the Byron Corporation to Mr. Bergen and taking the sales Byron made and assuming that Chaucer's sale would have been the same, and then taking into consideration also the sales of Byron Corporation to Furlaud, Reuter & Company at various prices, I was able to determine from the Furlaud, Reuter books that Furlaud purchased from Chaucer 10,600 more shares from them than they did from Byron, and the difference between the Byron investment account in that stock and the Chaucer investment account as given me by Mr. Parisette, that seems to check, that is the difference in the two investment accounts was 10,600 shares. That is accounted for by the fact apparently that Chaucer sold 10,600 more shares to Furlaud than Byron did.

Q. Were you able to spell out anything with respect to sales by Chaucer——

[fol. 141] By Mr. Hirshfield:

Q. Just a moment, when you speak of Furlaud, you mean Furlaud & Company, Inc?

A. Yes, that is right, I am speaking of the corporation.

Q. Would you be careful to make that distinction?

A. Yes.

By Mr. Royall:

Q. Were you able to spell out of these analyses the existence of any transaction by Chaucer in the performance of this Bergen agreement, delivery and sale of any Chaucer stock,—of Chaucer's Duquesne stock to Bergen? You testified to the receipt of $425,000 on the Byron books for 42,500 shares and 42,500 on the Byron books; were you able to spell out anything with respect to the sale by Chaucer to Bergen?

A. Of course, I did not see any books of any kind or any records as far as Chaucer were concerned.

Mr. Royall: Have you got the Chaucer records here? Is that young man here who was subpoenaed to produce them, who was secretary of the Chaucer Corporation?

Mr. Hirshfield: They are not in his possession.

Mr. Royall: He swore in the course of the suit that they were in his possession.

Your Honor, the Chaucer Corporation and Byron Corporation made a motion to dismiss the subpœna on the ground that they were not doing business in New York. That motion was based on the affidavit of Coonrod, who was secretary and said that he had the books in his possession. [fol. 142] We have subpoenaed these books and served the subpoena on Mr. Coonrod and Mr. Coonrod swore, I understand—Mr. Coonrod is a member of your office?

Mr. Hirshfield: That is right. He was a dummy officer.

Mr. Royall: Whether dummy or not, he is the secretary and he has to have some representation in the corporation.

We have subpoenaed those books and records, if the Court please, and I submit we should be entitled to see them.

The Court: Let us have him here and hear what he says.

Q. Mr. McShea, either from conversations with Mr. Parisette or other members of his staff——

Mr. Hirshfield: Whose staff?

Q. (Continued.)—Furlaud & Company, Inc. or Maxime H. Furlaud or Carlos Reuter, talks with Mr. Parisette or other members of that office, examining the Bergen contract, examination of the Furlaud books, Byron books, Kingston books, were you able to construct an account of the sale of any other shares to Bergen & Company other than the 425,000 shares that you have testified about?

A. No, sir.

Q. I am not asking from books alone, I am asking from statements made by Mr. Parisette or otherwise?

A. Those 425,000 shares to Bergen, is all I know of except what was apparently sold by Chaucer.

Q. I am asking you about Chaucer. I am asking you if you have got any information in these examinations relat- [fol. 143] ing to the matter of the sale by Chaucer?

A. Of course, I have the contract, but I believe from that, that Chaucer sold the same number of shares to Bergen that Byron did.

Q. Were any statements made to you by Parisette or others to that effect?

A. No, I don't believe so.

Q. Will you refresh your recollection by reading what I show you here?

A. I just don't know what you mean, Mr. Royall.

Q. Have you read this, "85,000 shares sold to Bergen", where did you get that from?

A. From my assumption, in accordance with the contract, that Chaucer also sold 42,500 shares, I worked this up on that assumption, which was based upon the contract.

Q. You assumed that the contract was performed 50-50, as the contract on its face indicated it was intended to be?

A. Yes, sir.

Q. And that upon that assumption, if it was performed 50-50, Chaucer sold another 42,500 shares to Bergen?

A. That is right.

Mr. Hirshfield: I object to that ground of assumption.

Q. I mean that is the best you can testify on that score?

A. Yes.

Kingston Corporation acquired 535,000 shares from the Duquesne Gas Corporation, under the terms of the reorganization agreement. Twenty-five thousand of those shares were transferred to Furlaud, Reuter & Co., Inc., as a dividend in kind on June 4th, 1930. On the same day, there was a dividend in kind declared to Furlaud & Company, Inc., covering $1,300,000 bonds. The Furlaud & Co. books record the receipt of the stock and bonds.

[fol. 144] There are two letters, one written by the Chaucer Corporation and another by the Byron Corporation, both dated May 27, 1930, and both addressed to the Kingston Corporation, New York City, which indicate or explain how options were given to certain individuals carrying with those options the right to acquire the stock of the Duquesne Gas Corporation from the Kingston Corporation at the price of 50 cents a share during 1930.

Q. Will you name the individuals?

A. Shall I read part of the letter?

Q. Yes, if you have a copy of the letter here, read it.

Mr. Hirshfield: Let us have it from the original source, if we can lay our hands on it.

Mr. Royall: Perhaps I can just read it.

"May 27, 1930.

Kingston Corporation,
New York, N. Y.

GENTLEMEN:

We are the owner by assignment of certain options given by you originally to Elsie Reuter and to Carlos Reuter to purchase 55,000 shares and 200,000 shares respectively of the common capital stock of Duquesne Gas Corporation for 50 cents a share, which options are good until January 1, 1931.

We hereby propose to exercise the foregoing options immediately upon condition that you accept from us our two demand notes in the sums of $27,500 and $100,000 respectively, both notes payable with interest at 6% at the [fol. 145] office of the Corporation Trust Company, 7 W. 10th St., Wilmington, Delaware.

We propose to enter immediately into an option agreement with John J. Bergen requiring the deposit by us of the aforesaid stock and by virtue of which Mr. Bergen will obtain an option to purchase the common capital stock of the Duquesne Gas Corporation, and we agree to pay the foregoing notes upon the exercise by Mr. Bergen of his option to purchase the first block of 100,000 shares of the common capital stock of the Duquesne Gas Corporation.

We also desire you to issue to us in the event that our proposal is accepted, one certificate representing 55,000 shares of the common capital stock of Duquesne Gas Corporation to cover the stock originally optioned to Elsie Reuter and certificates representing the balance of 200,000 shares in whatever form you may desire.

Your acceptance of this proposal will give this the force of a contract between us.

Very truly yours, (Signed) Chaucer Corporation, By Carlos Reuter (L. S.) Pres. Accepted: Kingston Corporation, By Robert Halporn, Asst Sec'y."

Mr. Royall: Will you refer me to a similar letter from the Byron Corporation?

(Document handed to counsel.)

Mr. Royall: Here is a letter dated May 27th, 1930, the [fol. 146] same date as that addressed to Kingston Corporation, New York, New York:

"We are the owner by assignment of an option given by you originally to Maxime H. Furlaud to purchase 255,000 shares of the common capital stock of the Duquesne Gas Corporation at 50 cents a share, which option is good until January 1, 1931.

We hereby propose to exercise this option immediately upon condition that you accept from us our demand note in the sum of $127,500 payable with interest at 6% at the office of the Corporation Trust Company, 7 West 10th Street, Wilmington, Delaware.

We propose to enter immediately into an option agreement with John J. Bergen, by virtue of which Mr. Bergen will obtain an option to purchase some of the common capital stock of Duquesne Gas Corporation and we agree to pay off the foregoing note upon the exercise by Mr. Bergen of his option to purchase the first block of 100,000 shares of the common capital stock of Duquesne Gas Corpporation.

Your acceptance of this proposal will give this the force of a contract between us.

Very truly yours, Byron Corporation By James P. Cleaver, president. Accepted: Kingston Corporation, by Robert Halporn, Assistant Secretary."

James P. Cleaver was President of Byron Corporation and was not an employee of Furlaud & Company, Inc.

[fol. 147] My notes indicate that the records of Kingston Corporation show they received the notes from Byron Corporation and Chaucer Corporation and that on December 2, 1930 Byron Corporation paid interest of $3,995 and $127,500 on account of principal of the note. My notes indicate that there is another entry on the same date in the same total amount with the name Chaucer with a question mark after it.

In addition to the dividend in kind of Kingston Corporation, there was a cash dividend declared, payable as follows: $5,500 to Robert Halporn on one share of stock; $5,500 to M. H. Furlaud on one share of stock, and $264,000 to Furlaud & Company, Inc. on 48 shares of stock, making a total of $275,000.

Q. Which is the sum total of those two payments we just traced in there, isn't it?

A. Well, it is about $12,000 more; do you want the exact amount?

Q. Yes, give us the exact amount.

A. Those two cash receipts amounted to $262,980 in total and the cash dividend amounted to $275,000.

Q. The amount of this cash dividend was the amount of these recorded payments from Byron Corporation and Chaucer Corporation (with a question mark) plus what amount of money—you mentioned the amount of money plus $12,000?

A. I can give you the exact amount.

Q. Just make the computation.

A. That amount is $12,020.00.

My records do not show who the directors, stockholders or officers of the Byron Corporation and Chaucer Corporation were. It is stipulated that Elsie Reuter is the wife [fol. 148] of Carlos Reuter, and Eleanor Furlaud is the wife of Maxime H. Furlaud.

Mr. Hirshfield: I want to renew my motion to strike out the testimony of this witness.

The Court: Motion denied.

Mr. Hirshfield: Exception.

Eugene P. Brady, recalled by the complainant, testified:

By Mr. Royall:

I stated yesterday that to my knowledge, at the time of the issue, there were no market operations, as you call it, as of April 9th, or so. However, subsequently there was continued buying and selling from a period of about June to October, 1930, where different bonds were bought on the market, and sold through the secondary distributing group. I have no idea as to the number of bonds on hand at the start of the operation. I should say there were in the neighborhood of $2,000,000 sold during that operation.

At the time of the organization of the secondary group, I guess there were some $800,000 in bonds left, and there were acquisitions in these market operations. The second-

ary distributing group was organized to float the balance.

These bonds were admitted to trading on the curb, and were traded on the curb during that period. The plan of the distributing group was that the distributors were to be allowed to take the bonds down, the bonds which they sub-
[fol. 149] scribed for, at the then market, less two points on sales up to 15 bonds, three points on sales from 15 to 25, and 3½ points on sales over 50 bonds. These figures were off the day's market prices.

In the secondary operation, the price started, as far as I can figure, at 88 and as of September 30th, a high of 95¼ was reached. On October 30th, the market had receded to 84½, at which time I think the operation ended.

Paul M. Coonrod, called as a witnes on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Royall:

The copy of the subpoena shown to me was served upon me. It requires production of the stock ledger, ledger, minute book, letters, contracts and other documents of Chaucer Corporation. I have produced only the minute book of the Chaucer Corporation for the trial.

The information as to one or two isolated transactions referred to in my affidavit of April 12th, 1932, came from the minute book. The isolated transactions involved a transaction with John J. Bergen in May, 1930, relating to the exercise of an option by the Chaucer Corporation to purchase 255,000 shares of the Duquesne stock, and to the signing of a contract between Chaucer Corporation and John J. Bergen to sell him certain securities, all of which is embodied in certain resolutions appearing in the minute book of Chaucer Corporation.

Tillie Pollack mentioned as a director, is a stenographer in the office of Eppstein & Hirshfield, by which firm I am also employed.

[fol. 150] I believe that Carlos Reuter was President of the corporation at that time

I was Secretary of the corporation.

Q. There is recorded in this minute a resolution that "This corporation exercises the options to purchase 255,000 shares of the capital stock of Duquesne Gas Corporation from the Kingston Corporation acquired by it from the Virgil Corporation upon condition that the Kingston Corporation agrees to accept from this corporation demand notes of this corporation for the consideration to be paid for the said stock."

A further resolution is recorded:

"Resolved that the Secretary of this corporation be and he is hereby directed to do all things that may be essential to effectuate the exercise of said option."

May I pause for a moment to ask if the secretary there referred to was yourself; was it?

A. Yes.

Q. The president presented a resolution in which it was proposed that the corporation enter into a contract with J. J. Bergen, which contract is as follows—may I pause to ask if the president refers to Carlos Reuter?

A. I believe he was president at that time.

Q. Then there is attached a copy of the form of contract. The contract between the Byron Corporation and the Chaucer Corporation which has been put in evidence here as Plaintiff's Exhibit 31; I will show you Exhibit 31 if you have any doubt about that, so that you can see it is the same contract that is in your minutes (document handed to the witness). Don't make any long comparison, just [fol. 151] enough to satisfy your conscience that it is the same. I will say that this contract was produced from your files.

A. That is right.

Q. The resolution in the minutes refers to contract, Exhibit 31?

A. That is right, yes.

Q. I want to call your attention to this resolution that I read:

"Resolved that this corporation exercise the option to purchase 255,000 shares of the capital stock of Duquesne Gas Corporation from the Kingston Corporation acquired by it from the Virgil Corporation upon condition that the Kingston Corporation agrees to accept from this corpora-

tion demand notes of this corporation for the consideration to be paid for said stock."

Will you translate the meaning of that resolution to me?

A. I know nothing about the resolutions shown to me, except what I see here. I was a dummy director, and I did only what I was told to do by Mr. Eppstein or Mr. Hirshfield. I know nothing about the matter, other than what you will find in the book.

I know practically nothing about the Virgil Corpporation referred to, except that I believe it was organized in our office, but I had nothing to do with it. I do not know whether I am an officer of the Virgil Corporation. I am a dummy director in quite a few corporations.

Another transaction was the offer on May 16, 1930, by Elsie Reuter to exchange 1,000 shares of the common stock of Furland & Company, Inc. for 10,000 of the capital stock of the Chaucer Corporation, each in the par value of $100. [fol. 152] The offer was accepted by Marion Goodman for Chaucer Corporation.

Marion Goodman whose name is mentioned in the minute book is a secretary in the office of Eppstein & Hirshfield. She was secretary of the Chaucer Corporation at the time. As far as I know the Chaucer Corporation is still in existence. I believe I am still secretary of it now.

I do not know whether Bergen ever bought any of the shares which are the subject of the contract shown to me. I do not know who the stockholders of the Chaucer Corporation are; I may have known at one time who the stockholders were, but I don't remember anything about it now. I have no idea for whose purpose the corporation was brought into existence. I merely acted as a dummy throughout the entire transaction.

Carlos Reuter actually attended the meetings recorded here; the meetings were actually held as set forth in the minutes and were attended by the directors. Those present besides Mr. Reuter and myself were Tillie Pollack and Marion Goodman, both employees in Eppstein & Hirshfield's office.

I have no other information about the matter. There were no stockholders' meetings of Chaucer Corporation called, except the original incorporators' meeting; the original incorporators were Marion Goodman, Mildred S.

Reisman and Tillie Pollack, all of whom are employees in our office.

I have heard of James P. Cleaver. I don't know much about him; I merely saw him in the office, and that is all that I know about him. He was formerly in some branch of the stock business.

[fol. 153] Lyon F. Terry, called as a witness on behalf of the complainant, testified as follows:

Direct examination.

By Mr. Royall:

I am a member of the organization of Ralph E. Davis, at the New York office. Some time in March, 1930, I went to the office of Furlaud & Company, and saw Mr. Reuter and Mr. Furlaud in connection with the circular they were then issuing. I told them that I had a telegram from Mr. Davis in which he objected to the manner of the use of his name and requested that they separate the values of the property named in the circular, because it created the impression that we subscribed to the total value at $7,000,000. The circular originally spoke of a joint appraisal, and we wanted to separate the properties that were appraised by us and the properties appraised by others.

By the Court:

Q. Did they say anything why they so represented it as being worth seven million dollars and using your name jointly with someone else's?

A. That was their affair and we had nothing to do with it.

Q. I asked whether they said anything to you as to why they had done that.

A. I do not recall, sir, whether they said anything in that regard or not.

Cross-examination.

By Mr. Hirshfield:

Q. Mr. Terry, as I understand it, subsequent to your visit to the office of Furlaud & Company, Inc., and in your con-

[fol. 154] versation with Mr. Reuter, they amended the circular so as to meet with your approval?

A. They did, sir.

Q. Just to refresh your recollection, I show you a paper which I think has your signature on it so that you can be quite certain and the court will understand that your objections were met.

A. Yes, sir; I recognize the signature to that.

Q. That is your signature?

A. Yes, sir.

Mr. Hirshfield: That is all.

Cyrus C. Robbins, called as a witness on behalf of the complainant, testified as follows:

Direct examination.

By Mr. Royall:

I am an engineer, and I was associated with Ralph E. Davis, until February 1st of this year. I was associated with the Pittsburgh office of the organization.

Q. What, if anything, did you have to do with making appraisals of properties that became constituent with the properties of the Duquesne Gas Corporation?

A. I completed appraisals on five of the properties and made field examinations of four of the properties.

I was here when Mr. Krog testified.

About February 1st, 1930, after I had rendered five appraisals, Krog came to me and asked for my working papers as to the other four properties on which I had not rendered appraisals. I had three assistants with me in the field doing the work there, and we had gathered data respecting other properties on which appraisals had not been rendered.

[fol. 155] At various times, Mr. Reuter would come into our office and asked me what values we were getting on these properties; he came in from day to day, and while our work was in preliminary form, I gave him such information as I got from those preliminary appraisal schedules.

Q. Did you give him anything to indicate any values in dollars and cents, what your appraisals would work towards with respect to the Nuss property and what were the names of the four properties—the names got mixed up—that you had not reported on.

A. Nuss, Behm, Wally and Byers and there was at that time property on which I had not collected data on, Garrison.

Q. Now, as to those four first mentioned which you indicated to Mr. Reuter in a preliminary way, what your work was leading to in dollars and cents, what did that indicate?

A. So far as the operated properties were concerned, I think it indicated between $800,000 and $1,000,000. That did not, however, include the Behm property, as I had not worked any preliminary schedules on that as yet.

Mr. Hirshfield: Your Honor, I object to this line of testimony on the same grounds as before.

The Court: Yes.

Mr. Hirshfield: Exception.

OFFERS IN EVIDENCE

Counsel for complainant thereupon read into the record the following facts:

"Certificate of Incorporation of Furlaud & Company, Inc., filed in New York County July 18th, 1928.

[fol. 156] Certificate of Change of Name to Furlaud, Reuter & Company, Inc., filed August 1, 1930.

Certificate of Change of Name to Winchelsea Holding Corporation filed October 10, 1931. Certificate of dissolution was filed October 27, 1931."

Thereupon counsel for the complainants read into the record the following statements appearing in the answers to certain interrogatories propounded to the defendants.

The stockholders of Byron Corporation from February 1st, 1930, to date, and the number of shares held by each one are:

Eleanor M. Furlaud, from May 10, 1930, 10,000 shares.
Kipling Corporation, from May 15, 1930, 30,000 shares.

The following were the directors of the Byron Corporation from February 1st 1930:

Paul M. Coonrod,
Tillie Pollack,
James P. Cleaver.

The following is a list of each and every officer of the defendant Byron Corporation, from February 1, 1930:

President—James P. Cleaver,
Secretary—Paul M. Coonrod,
Treasurer—Paul M. Coonrod.

In the answers to interrogatories propounded to the defendant, Maxime H. Furlaud, the following appears as a list [fol. 157] of the stockholders of the corporation from the 1st day of February, 1930, to the time of its dissolution, October 27th, 1931, with a statement of the number of shares held by each stockholder:

Preferred Stock

Maxime H. Furlaud, from August 1, 1928 to July 29, 1930, 5,000 shares.

Furlaud Holding Corporation, from July 29, 1930, 5,000 shares.

Common Stock

Maxime H. Furlaud, from August 1, 1928 to April 4, 1930, 1,200 shares.

Carlos Reuter, from August 1, 1928, 800 shares.

Otto E. Schuller, from April 4, 1930 to July 29, 1930, 1 share.

Maxime H. Furlaud, from April 4, 1930 to April 15, 1930, 1,199 shares.

Carlos Reuter, from April 15, 1930, 200 shares.

Maxime H. Furlaud, from April 15, 1930 to July 29, 1930, 999 shares.

Furlaud Holding Corporation, from July 29, 1930, 1,000 shares.

The following is a list of each and every director of Furlaud & Company, Inc. (otherwise known as Furlaud, Reuter & Co., Incorporated and Winchelsea Holding Corporation) from the 1st day of February, 1930, to the time of its dissolution:

M. H. Furlaud, from February 1, 1930 to October 27, 1931.

[fol. 158] Carlos Reuter, from February 1, 1930 to October 27, 1931.

F. T. Kelsey, from February 1, 1930 to August 1, 1930.

J. P. Cleaver, from August 1, 1930, to February 21, 1931.

Robert Halporn, from February 21, 1931 to October 27, 1931.

The following is a list of each and every officer of Furlaud & Company, Inc. (otherwise known as Furlaud, Reuter & Co., Incorporated and Winchelsea Holding Corporation) from the 1st day of February, 1930 to the time of its dissolution:

President, M. H. Furlaud, from February 1st, 1930 to October 27, 1931.

1st Vice Pres., Carlos Reuter, from February 1, 1930, to October 27, 1931.

Treasurer, M. H. Furlaud, from February 1, 1930 to August 1, 1930; Robert Halporn, from August 1, 1930 to October 27, 1931.

Secretary, John W. DeWitt, from February 1, 1930 to August 1, 1930; J. P. Cleaver, from August 1, 1930, to February 21, 1931; Robert Halporn, from February 21, 1931 to October 27, 1931.

Asst. Vice-Pres., R. S. Cullen, from January 2, 1931 to June 30, 1931; C. H. Drew, from January 2, 1931 to June 30, 1931; O. E. Schuller, from December 31, 1930 to October 27, 1931.

Cullen and Drew had an entirely independent firm prior to becoming employees of Furlaud & Company. The trans-
[fol. 159] action was finished before they became employees. They did not become officers until January 2, 1931.

W. A. Lee, from January 2, 1931 to August 31, 1931.

Robert Halporn, from December 31, 1930 to October 27, 1931.

Asst. Secretary, Robert Halporn, from August 1, 1930 to February 21, 1931.

Asst. Treasurer, J. P. Cleaver, from August 1, 1930 to February 21, 1931.

J. P. Cleaver never was an employee of Furlaud & Company. He was connected with Furlaud Holding Corporation, the stock of which was owned by Mrs. Furlaud. Mrs. Furlaud owns 10,000 shares of Byron Corporation, and Kipling Corporation owns the other 30,000 shares.

F. T. Kelsey and James P. Cleaver were nominees of Maxime H. Furlaud.

Robert Halporn was the joint nominee of Maxime H. Furlaud and Carlos Reuter.

The situation of Maxime H. Furlaud and Carlos Reuter is self explanatory.

John W. DeWitt and Jas. P. Cleaver were nominees of Maxime H. Furlaud.

R. S. Cullen, C. H. Drew, W. A. Lee, Robert Halporn and Otto E. Schuller were employees of Furlaud & Company, Inc.

Chaucer Corporation has never been dissolved.

The following is a list of every stockholder of the defendant Chaucer Corporation from February 1st, 1930 to date, together with a statement of the number of shares held by each stockholder.

Elsie Reuter, from May 10, 1930, 10,000 shares.
[fol. 160] Virgil Corporation, from May 15, 1930, 30,000 shares.

The following is a list of the directors of the defendant Chaucer Corporation from February 1, 1930 to date:

Carlos Reuter.
Tillie Pollack, up to August 27, 1931.
Paul M. Coonrod.
Elsie Reuter, from August 27, 1931.

The following is a list of the officers of Chaucer Corporation from February 1, 1930, to date:

President, Carlos Reuter.
Treasurer, Paul M. Coonrod, up to August 27, 1931.
Treasurer, Elsie Reuter, from August 27, 1931.
Secretary, Paul M. Coonrod.

Kingston Corporation has never been dissolved.

CHARLES C. NUSS, recalled, testified as follows:

Direct examination.

By Mr. Royall:

The additional properties mentioned by Mr. Duke were all in the nine properties that were referred to by Mr. Duke, as separate properties.

There were, however, three properties that were not covered by escrow purchases; these were the Tucker acreage, the C. P. Levier, and the W. G. Wade. The Stybr-Watson property, consisting of 14,000 acres, was in escrow, but was treated separately in the report. That is the property which [fol. 161] I testified in my direct examination was conveyed gratuitously. The total appraisal of the Nuss escrow, which included the Stybr-Watson and the Wade properties, was $2,637,164. The purchase price of the Nuss properties was $660,000, and of the Wade property $5,135. The Tucker property consisted of leases on approximately 765 acres of unoperated territory for which $12,000 was paid. The Levier consisted of 5,500 acres of unoperated land, and cost approximately $11,800.

The Wade property, consisting of 1,000 acres and costing $5,135, was treated as part of the Nuss appraisal.

Q. I think you have testified that the Nuss property, including this Stybr-Watson acreage you gave, and this Wade acreage, that was additionally acquired; what was that valued at?

Mr. Hirshfield: Again may I renew my objection on all of the grounds previously stated?

The Court: Yes.

Mr. Hirshfield: Exception.

The Court: Yes, you may have an exception to this line of testimony.

Mr. Royall: The witness may answer the question?

The Court: Yes.

A. The valuations of the two properties you mentioned, Stybr-Watson and the W. G. Wade including operated property, approximately $2,000 or $3,000.

The Tucker ad Levier undeveloped acreage were attached to the Behm property. The Behm property, with those

[fol. 162] additions, were appraised at $1,596,550. The purchase price of the Behm property was $200,000. The Tucker property cost $5,000 and the Levier cost $11,800.

Prima Facie Proofs Closed.

Defendants' Proofs

ROBERT HALPORN, called as a witness on behalf of the defendants, testified as follows:

Direct examination.

By Mr. Hirshfield:

I was an officer of the Winchelsea Corporation, formerly Furlaud, Reuter & Company, and formerly Furlaud & Company, Inc. I was formerly an officer of Kingston Corporation; I was present at the closing of the Duquesne Gas Company matter on April 9th, 1930, and I had charge under Mr. Reuter of the financial arrangements at that time.

On April 9th, 1930, Furlaud & Company borrowed from the Chatham & Phenix National Bank & Trust Company $700,000 against the collateral of $1,000,000 par value notes of Duquesne Gas Company, and some stock; I cannot tell you the exact number of shares. This money was put into the account of Furlaud & Company with the Central Hanover Bank & Trust Company, and this $700,000, together with other moneys, were used to pay off the day loan of the Central Hanover Bank & Trust Company. Furlaud & Company, on the same day, borrowed $300,000 from the Hibernia Trust Company against collateral consisting of [fol. 163] Duquesne bonds. This loan was applied similarly. On the same day Furlaud & Company borrowed $500,000 from the Pacific Trust Company, against collateral consisting of Duquesne bonds, which loan was applied similarly.

I believe that the Pacific Trust Company loan and the Hibernia loan were paid off in the course of three months and the Chatham & Phenix loan a little bit later.

I was an officer of the Duquesne Gas Company. I have made an examination of the preliminary original stock certificate book of the Duquesne Gas Corporation; I was one of the signing officers of all the shares of original issue

and can say of my own knowledge that the sole stockholder of Duquesne Gas Corporation on April 9th, 1930 and April 10th, 1930, was F. L. Parisette, who was the nominee of Kingston Corporation and Furlaud & Company, Inc., and an employee of Furlaud & Company, Inc.

I know that he was the nominee inasmuch as I was an officer of Kingston Corporation and Furlaud & Company, Inc. It was the custom to put all stock held by Furlaud & Company in the name of F. L. Parisette, and we used his name as a "Street Name". Stock was put in a "Street Name", namely, of one F. L. Parisette to facilitate the transfer of stock owned by the corporation, which would otherwise have necessitated a corporate resolution for each transfer.

Original stock certificate book of Duquesne Gas Corporation was offered in evidence and marked "Defendants' Exhibit B".

I know of my own knowledge that Furlaud & Company, Inc. was sole stockholders of Kingston Corporation on April 9th, 1930.

[fol. 164] Minute book of Kingston Corporation was offered in evidence and marked Defendants' Exhibit C.

One share of stock of Kingston Corporation was held in Mr. Furlaud's name, and one share of stock was held in my name, as nominee of Furlaud & Company, Inc. When a dividend was declared of $5,500 on each share of stock, and checks of $5,500 a piece were issued to each of us, those checks both went into the account of Furlaud & Company, Inc.

Certified copy of Certificate of Incorporation of Furlaud & Company, Inc. was offered in evidence and marked Defendants' Exhibit D.

I was present at the closing of April 9th, 1930, and had occasion to see the checks that came in from the various members of the "Distributing Group"; all those checks were made payable to the order of Furlaud & Company, Inc., and they were deposited with the Central Hanover Bank & Trust Company in the account of Furlaud & Company, Inc.

Q. Mr. Halporn, I requested you to look at the books of Furlaud & Company recently to make an inspection

thereof, with reference to the number of bonds that were taken up and paid for on April 9th, 1930; can you state from your own knowledge, as refreshed by those books, how many bonds were taken up on that day?

A. Approximately $2,000,000 face value of bonds.

Q. Have you refreshed your recollection as to the amount of the "Commitments" that were made up by various sub-[fol. 165] scriptions to the distributing group on April 9, 1930?

A. Yes.

Q. Will you state what the total amount of the subscriptions, face value of bonds that were made by that time?

A. Approximately $2,350,000 nominal value.

Mr. Hirshfield: I read from the certificate of incorporation of Furlaud & Company, Inc., paragraph 3, relating to the purposes for which it is to be formed, which are as follows:

"To institute, enter into, conduct, assist in promoting, participating in, invest in, carrying on and engage in mining, quarrying, irrigating, stock-raising, real estate, engineering, contracting, manufacturing, industrial, commercial, mercantile, construction and development enterprises, ventures, operation, contracts, works and businesses of every nature, name and description in any part of the world, and so far as permitted by law, within the State of New York.

"To promote and assist financially or otherwise corporations, firms, syndicates, associations, individuals and others and to aid all or any of them by loans, subsidy, guarantee or in any other manner whatsoever."

Cross-examination.

By Mr. Royall:

Mr. Furlaud and Mr. Reuter were present at the closing on April 9th, 1930. Mr. Furlaud was president of the corporation; I felt that both Mr. Reuter and Mr. Furlaud were [fol. 166] my bosses, I would not say who was the big boss. I am an employee of Furlaud & Company, Inc., and received a salary of $400.00 a month.

I received in addition a bonus of $7,500. I did not get any special bonuses in respect to special transactions, and I did not receive any other money. I was Mr. Furlaud's

and Mr. Reuter's chief assistant in financial details. No one in the organization knew more about and had closer contact with the financial arrangements respecting this issue than I had.

Q. You have testified that the proceeds of the $700,000 Chatham & Phenix Loan, of the $300,000 Hibernia Loan and the $500,000 Pacific Trust loan, all negotiated by Furlaud & Company, Inc. on April 9th, were deposited on that day to the credit of Furlaud & Company, Inc. with the Central Hanover Bank & Trust Company, is that right?

A. Yes.

Q. And thus applied to the liquidation of the $3,379,500 loan, that one-day loan, that Mr. Furlaud had negotiated at the Central Hanover Bank & Trust Company?

A. Furlaud & Company.

Mr. Furlaud negotiated the making of that loan.

Q. What became of the checks that were delivered at the closing on April 9th, 1930, at the Central Hanover Bank & Trust Company by the subscribers against the delivery of the bonds which they had subscribed for; what disposition was made of those checks?

A. They were endorsed by Furlaud & Company, Inc. and deposited with the Central Hanover Bank & Trust Company.

Q. Now, as a result of those various deposits—one other question first—is it not a fact that two checks were also passed on April 9th against the account of the Kingston [fol. 167] Corporation at the Central Hanover Bank & Trust Company to the order of Furlaud & Company, Inc., aggregating the sum of $565,100?

A. That is right.

Q. So that there was passed a credit of Furlaud & Company on that date of $565,100, which came back to the Kingston Corporation, the proceeds of the loans from the Chatham, Hibernia and Pacific and the checks that the subscribers to the bonds turned over there; how much was left in the account after crediting those things and charging the loan against it?

A. In whose account?

Q. Furlaud & Company's account.

A. Well, I had occasion since this to look up the account——

Q. How much was that account?

A. Approximately $500,000.

Q. So after those credits were completed, there were approximately—I presume you are here prepared to testify what you got in exact figures, are you not?

A. Will you permit me to get my books?

The Court: Yes.

Mr. Royall: Certainly, we want exact figures.

The Witness: The statement of account shows on April 9, 1930, a balance of $482,782.02 to the credit of Furlaud & Company, Inc.

Q. What did the balance on the next day show?

A. The balance on April 10th shows $286,782.02.

Q. What was withdrawn during the interval?

A. I beg pardon.

Q. What withdrawal was made during the interval?

Mr. Hirshfield: I object to that as improper cross-exam-
[fol. 168] ination, unless Mr. Halporn is made his own witness.

The Court: I will allow it.

Mr. Hirshfield: Exception.

By the Court:

Q. What happened to this sum of approximately $200,000?

A. One check was drawn for $70,000, one for $125,000 and one for $1,000.

Q. Do you know to whom these checks went?

A. There was one check to the order of the Pacific Trust Company for $1,000.

By Mr. Royall:

Q. Yes, how about the rest of them?

A. There was one check for $70,000 to the Hibernia Trust Company.

Q. Yes?

A. And one check for $125,000 to the Chatham & Phenix National Bank & Trust Company.

Q. So that at that very moment their loans had been liquidated to the extent of the credit of those checks, hadn't they?

A. I beg your pardon. These checks $70,000 and $125,000 were not used to pay off loans to the Hibernia Trust Company.

By the Court:

Q. What were they used for?

A. They were credited to our regular account with the Chatham & Phenix National Bank & Trust Company and Hibernia Trust Company.

Q. That is, the regular account of Furlaud, Reuter & Company to the deposit account?

A. Of the deposit account, that is correct.

[fol. 169] By Mr. Royall:

Q. You had to do with the organization of the distributing group; you were in close touch, weren't you, with the operation of the marketing of these bonds?

A. I was no salesman.

Q. I didn't ask you if you were a salesman or not, I asked you if you were in close touch with the progress of that work and kept advised of it?

A. Yes, I was.

Q. Isn't it a fact that the subscribers to the bonds were required under the syndicate arrangement to take the bonds up on the delivery date by an initial payment of 96½% of the face value of the bonds, subject to future adjustment, is that a fact or not?

A. Yes.

Q. Now, I don't want approximations, I want details. To what extent was the bond subscription subscribed for at the time of the closing?

A. It is impossible for me at this time to give an exact amount, because no records are available to ascertain this amount, but so far as I can recollect, and that is the only thing I can do, it was approximately $2,350,000.

Q. Who were Bioren & Company?

A. A banking firm in Philadelphia.

Q. What did they have to do with the issue of these bonds?

A. They were members of the banking group.

Q. Who were Bradford, Kimball & Company?

A. They were a banking house in San Francisco and Los Angeles.

Q. What did they have to do with the issuance of these bonds?

A. They were also in the banking group.

Q. Who were Hinks Bros. & Company?

[fol. 170] A. They were a banking house in Bridgeport, Connecticut.

Q. What did they have to do with this?

A. They were also members of the banking group.

Q. Who were G. H. Huston & Company, Inc.?

A. They were bankers in New York.

Q. What did they have to do with it?

A. They too were members of the banking group.

Q. You say all these five houses were members of the banking group. Do you make any distinction between them as a banking group and the subscribers and the distributing group, do you make any distinction between subscribers and distributing group?

A. There is a distinction.

Q. Is there a distinction?

A. There is a certain distinction.

Q. All right, tell the Court what the distinction is.

A. The members of the banking group are really each of them in control of certain territory in which bonds are being sold. For example, Bioren & Company had reserved for themselves the district of Philadelphia.

Q. How many of the bonds were allotted to Bioren & Company as a member of the banking group?

A. I can not tell you that; I don't remember.

Q. Give us your best recollection. Have you anything that you can refresh your recollection by?

A. I would have to look through the books of Furland & Company, Inc. to see how many bonds they paid for.

Q. Give us your best recollection.

A. I would say a million dollars.

Q. All right, as to Bradford, Kimball & Company, how much of the issue was allotted to them?

A. I don't remember that.

[fol. 171] Q. Give us your best recollection on that?

A. I would say about $250,000.

Q. Hinks Bros. & Company, how many were allotted to them?

A. About $300,000.

Q. Huston?

A. About $150,000.

Q. Now, as a matter of fact, Mr. Halporn, didn't this banking group commit themselves to take the whole $4,000,000, as a banking group? Please answer the question, Mr. Halporn.

A. No.

Q. What was the function of the banking group?

A. Well, in this case, the banking group was just the wholesale distributing group.

Q. Have you ever had any experience with public issues before, or is this the only one you know about?

A. I have had experience before.

Q. Have you had enough experience in this matter to know what the ordinary function of a banking group is in a public issue?

A. The ordinary function of a banking group was to underwrite the entire issue.

Q. Quite so. And that is what happened here, isn't it?

Mr. Hirshfield: Just a minute, I object to that.

The Court: He may answer whether there was any underwriting agreement, or whether it was one of these fly-by-night transactions that took place in the heyday of prosperity.

By the Court:

Q. What was it, did the banking group undertake to float the whole issue?

A. No.

Q. What was it? Did they say they would take so many bonds, and if they did not take it, what happened?

[fol. 172] A. They agreed to take a certain number of bonds, but they did not guarantee the complete issue.

Q. Did they all make good on their agreements to take a certain number of the bonds and dispose of them, each of them?

A. They did.

Q. What was the aggregate of the amount that they took and disposed of?

A. Just as I told you before, I can not exactly remember.

Q. Where are the papers which show that?

A. The way to show it is through the books of Furlaud & Company.

Q. Are they here?

A. They are here.

Q. Can you find out and tell us from that what it is?

Mr. Hirshfield: We tried to get that information and Mr. Halporn spent quite a few hours trying to get that.

The Court: Can you check that up and get that information if I adjourned until two o'clock? Is there any other point you want?

Mr. Royall: Yes, your Honor, and I think it will throw a great deal of light on this subject of the bankers' group letter——

The Court: Have you got that?

The Witness: There was no banking group letter.

Mr. Hirshfield: Furlaud & Company organized the syndicate and they wrote a letter—I have been through all of this procedure, your Honor—it is a kind of copy-cat method that all of these bankers use. These bankers did not allow their names to be signed.

Mr. Royall: I would like to see those letters.

[fol. 173] Mr. Hirshfield: We simply haven't got them.

The Court: Are any of these bankers still in business?

Mr. Hirshfield: Yes, but they are in San Francisco, Los Angeles, Philadelphia and so on.

Recess.

Mr. Hirshfield: I think he has acquired the information about which I asked and about which Mr. Royall was asking him as to amount of bonds that Bioren & Company and the other people took. Have you got that?

The Witness: Yes.

Mr. Hirshfield: All right, give it to us.

The Witness: Bioren & Company took up $442,000 and paid for it; Hinks Bros. for $315,000; C. H. Huston & Company $275,000 and Bradford, Kimball & Company for $175,000.

Cross-examination.

By Mr. Royall (continued):

Q. That represented the balances of their undistributed commitments, did it not?

A. This represents the amount of bonds that were delivered to them and paid for by them.

Q. Yes, but the amount was arrived at as an undistributed balance of their commitments, wasn't it?

A. Well, as I told you before, the records available here only show how many bonds were paid for by each of these houses.

By the Court:

Q. Did they take a commitment for a certain number of bonds that they did not handle?

[fol. 174] A. Bioren had a territory in Philadelphia and there were bonds delivered in Philadelphia for which Bioren was to receive the credit.

Q. And are those bonds included in this?

A. No, they are not included here. As I told you, I can not, by this record state on whose order these bonds were delivered.

By Mr. Royall:

Q. Now, kindly answer my question.

A. What is your question?

Q. Is it a fact that these amounts that you read just now represented the balances in the case of each banker, of their undistributed commitments. Do you understand that phrase as I use it?

A. No, I don't understand it.

Q. All right, I will explain it in another way. There were numerous members of the distributing group, were there not?

A. There were.

Q. Perhaps 30 or 40 different houses?

A. There were.

Q. And the distributing groups revolved around members of the banking group, that is the distributing group, what you speak of as the Philadelphia or Pennsylvania area and they were revolving around Bioren & Company, am I right?

A. Yes.

Q. And the distributing houses located on the Coast, California and the western coast of these United States, were revolving around San Francisco, the house—what was their name, the Kimball firm, isn't it?

A. Yes, sir.

Q. They revolved around Bradford, Kimball & Company?

A. That is correct.

Q. And Hinks Bros. & Company was another circle of distributors?

A. As far as I remember, in the case of Hinks Bros. all [fol. 175] the bonds that were delivered to Hinks were bonds that they subscribed for, that they were committed for.

Q. Let me see if I can get this: There were received numerous checks at the closing on the 9th from numerous houses in and about Pennsylvania——

A. Yes.

Q. Which paid for bonds, when delivered, to the credit and the commitment of Bioren & Company, isn't that right?

A. Yes.

Q. So that this Bioren & Company payment represented the balance of Bioren & Company's undistributed commitment; now do you understand my phrase?

A. Yes.

Q. That is the fact, isn't it?

A. That is the fact, but may I add something?

The Court: Yes.

The Witness: There were undoubtedly bonds sold to houses in Philadelphia beyond the commitment of Bioren & Company.

By the Court:

Q. But you gave them the credit?

A. Right.

By Mr. Royall:

Q. That generally describes the method that was employed in this case?

A. Yes.

Q. And it is fair to say then that these figures that you have written out represent what they took, to take up the balance of their commitments?

A. As I stated, that is not quite correct.

Q. Isn't it correct?

A. It is not correct, because more bonds were taken up than were committed by Bioren.

By the Court:

Q. That is, they agreed to underwrite, as it were, a certain number of bonds?

A. Yes.

[fol. 176] Q. They had other houses in the Philadelphia area which handled some of the bonds and Bioren's commitment was reduced to the extent that those other houses took them up?

A. Yes, and in addition to that——

Q. And in addition to that you sold some bonds in the Philadelphia area?

A. Yes.

Q. For which you gave Bioren credit?

A. Yes.

Q. When, after all is said and done, they paid for the amount of bonds that you committed to them?

A. Yes.

By Mr. Royall:

Q. So their commitment was fully discharged, if it was a million dollars?

A. Yes.

Q. And you don't know whether it was a million, a million and a half or two million dollars, and you would not say that?

A. No, I cannot say.

Q. You don't know that?

A. No, but all the commitments were discharged.

Kingston Corporation opened an account with the Central Hanover Bank & Trust Company by a deposit of $27,000 which was furnished by Furlaud & Company, Inc. The purpose of that transaction was probably to pay out certain amounts by Kingston Corporation; then $3,015,000 was credited to that account on April 9th, and then, at a later time, there was paid out $2,449,000 to take up the escrow deposits. Out of this account on April 9th, there was paid to Furlaud & Company, Inc., $565,100, and some two or three months later there came into the treasury of Kingston some payments made by the Byron Corporation and Chaucer Corporation amounting to $260,000 or $265,000 which was in payment for stock. The money that was in the treasury of Kingston Corporation, after these trans-[fol. 177] actions were completed, but not all of it, was paid over to Furlaud & Company, Inc., by way of a dividend. I have not the books of Kingston here, but the statement of the Central Hanover Bank & Trust Company shows a balance to the credit of Kingston Corporation of $6,400.07,

after paying $275,000 in dividends in December. All of the $275,000 was ultimately paid over to Furlaud & Company.

A secondary distributing group was organized and approximately 200 or 300 bonds were the subject matter of that secondary distributing group.

All of the $4,000,000 bonds got sold. Furlaud & Company, Inc. bought $1,194,000 bonds by miscellaneous purchases.

These miscellaneous purchases were made up to July 23rd, 1931.

There was trading in these bonds before August, 1930, by Furlaud & Company, Inc. under the first syndicate agreement. We were permitted to re-deliver bonds at repurchase cost. Some of our distributors failed to take up these bonds, and then we were left with a certain number of bonds which became the subject of the secondary distributing group. I believe that the bonds were all marketed as a result of the operation of the secondary distributing group. All the $4,000,000 bonds and the $1,194,000 bonds acquired by miscellaneous purchases were marketed.

At the time of the closing, we did not have sufficient amount of commitments on hand, and we had to borrow money in order to close.

The subscriptions that had come in before we had our closing, indicated that the issue would go over satisfactorily.

Of the $565,000 paid by Kingston Corporation to Furlaud & Company, Inc. $300,000 were paid over to Furlaud & Com- [fol. 178] pany, Inc. for expenses, under a written agreement between Furlaud & Company, Inc. and Kingston Corporation. The agreement provided that Kingston Corporation should reimburse Furlaud & Company, Inc. for all expenses, I have not the agreement and I don't know whether it says $300,000 and no more, or up to $300,000. The $300,000 was deposited with the Central Hanover Bank & Trust Company by Furlaud & Company, Inc. to the account of Furlaud & Company, Inc.

By Mr. Royall:

Q. Do you know what the actual expenses of Furlaud & Company were in connection with this?

A. I don't know.

Q. You don't know whether they were more or less than $300,000?

A. I think they were somewhat less than that.

Mr. Hirshfield: May I state, your Honor, not knowing the two issues were coming up, we were unprepared first, on the question of appraisal, and second, on the question of expenses and losses and profits. There was nothing in the bill that gave us any notice of that.

Mr. Royall: We ask for an accounting.

Mr. Hirshfield: Yes, you ask for an accounting, but——

Mr. Royall: What I am trying to do is cross examine the witness. May I continue my cross-examination, your Honor?

The Court: Go ahead.

Q. Have you anything here by which you can enable yourself to testify with any degree of accuracy as to this?

[fol. 179] A. I believe the books of Furlaud & Company would show.

Q. Are you able, without any delay, to get that information?

A. I would have to look at the expenses.

Mr. Royall: What does your Honor wish to be done?

The Court: He was paid this much money. If you get an accounting, that will be ascertained in the accounting.

Mr. Royall: What we would like to accomplish is to make up our decree here, rather than go to a Master.

The Court: If you got to a Master, you would be allowed such sum of money as would represent the reasonable cost of handling the situation.

Mr. Royall: The Court could do that better than a Master.

The Court: Well, I am not going to do it now.

$300,000 was the estimated amount that would include the attorneys' fees, commissions to agents who had brought these properties to the attention of Kingston, printing fees and preparations of stocks, bonds and notes, engineers' fees, auditors' fees and recording fees. Out of this money approximately $17,000 or $18,000 was paid to both engineers. The attorneys' fees were not known at this time, but they were fixed at $30,000.

Of the $565,000 paid to Furlaud & Company, Inc. by Kingston on April 9th, Kingston loaned $265,100 to Fur-

laud & Company, Inc., and the check was deposited for the [fol. 180] account of Furlaud & Company, Inc. by the Central Hanover Bank & Trust Company. I don't think the loan was ever repaid.

Redirect examination.

By Mr. Hirshfield:

Furlaud & Company, Inc. was dissolved on October 27, 1931 prior to the commencement of this suit. The loans which were made at the three banks were arranged prior to the closing and were made after the closing.

By Mr. Hirshfield:

Q. Mr. Halporn, you made some calculations at the court's suggestion during the recess. Will you be good enough to tell the court how much actual money was received on April 9, 1930, by Furlaud & Company?

A. Furlaud & Company received $1,500,000 from the three loans, as stated before, $300,000 plus $265,100 from Kingston Corporation and $1,866,330 from the taking up of $2,500,000 of bonds, being a total of $3,931,430.

Mr. Hirshfield: That is all.

Recross-examination.

By Mr. Royall:

Q. Let us see if those figures check out. You say at the end of that day they had $484,000?

A. $482,000.

Q. They had $482,000 left in the bank?

A. Yes.

Q. Now, they had given a check on that day of $3,379,500 to Duquesne Gas Corporation, had they not?

A. Correct.

Q. And through the route of Kingston Corporation on [fol. 181] that day, they had gotten back $565,100 of that money?

A. They received from Kingston $565,100.

Q. They received back $565,100 of that money that they had——

Mr. Hirshfield: I object to the word "back."

The Court: That amount was paid by Kingston.

Q. $3,379,500 they paid out on that day?
A. Yes.
Q. And then they had left how much?
A. $482,000.
Q. There is $3,861,000. You say they received $1,500,000 from the three banks?
A. Yes.
Q. And that they got $565,100 from Kingston?
A. Which makes $2,065,100.
Q. According to that, they got $1,795,900 from other sources; did that check with your figures?
A. $1,866,330.
Q. Your records show they got $1,866,330 on that day?
A. Yes.
Q. From the take-up by miscellaneous distributing houses of bonds on that day?
A. Yes.
Q. Now then, let me ask you this further question: Day by day, after that, immediately following that, distributing houses were taking up bonds, were they not?
A. Yes.
Q. Actively?
A. Yes, sir.

Defendants' Exhibit E was offered in evidence, consisting of minutes of organization meeting of Duquesne Gas Corporation, attached to the answers of complainant to the interrogatories propounded by defendants.

[fol. 182] Defendants' Exhibit F was offered in evidence, consisting of minutes of meetings of directors of Duquesne Gas Corporation attached to the interrogatories answered by complainant.

Defendants' Exhibit G was offered in evidence, consisting of minutes of stockholders' meeting of Duquesne Gas Corporation.

Defendants' Exhibit H was offered in evidence, consisting of the offer of Furland & Company, Inc. to Duquesne Gas Corporation.

Motion by the defendants to dismiss on behalf of each and every of these defendants. Motion taken under advisement by the Court.

[fol. 183] PLAINTIFF'S EXHIBIT 1

UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK

FRANK T. HARRINGTON, Complainant,

against

DUQUESNE GAS CORPORATION, Defendant

PETITION OF GEORGE W. MCCANDLESS

To the Honorable Judge of the United States District Court for the Southern District of New York:

The petition of George W. McCandless, Receiver, shows to this Honorable Court:

First: That on the 19th day of January, 1932, your petitioner by a per curiam decree duly made by the United States District Court for the Western District of Pennsylvania, was duly appointed receiver of the assets, lands, tenements and hereditaments of the defendant, the Duquesne Gas Corporation, and all of its property, real and personal, including choses in action, and was required to file a bond in the penal sum of Fifty thousand dollars ($50,000).

Second: That your petitioner has duly accepted the trust in him reposed and has duly filed a bond as directed by said decree.

Third: That defendant is a corporation organized under and existing by virtue of the laws of the State of Pennsyl- [fol. 184] vania, with its principal office in the City of Washington, Washington County, Pennsylvania, and that its principal business is the business of producing and selling natural gas.

Fourth: That the aforesaid decree appointing your petitioner as receiver, was granted upon the amended bill of complaint in the above-entitled action, duly filed in the United States District Court for the Western District of Pennsylvania, upon the answer of the defendant Duquesne Gas Corporation to said amended bill of complaint. Attached hereto and made a part hereof are exemplified copies of said amended bill of complaint, said answer and the decree appointing your petitioner receiver in said suit in the United States District Court for the Western District of Pennsylvania.

Fifth: That by the aforesaid decree the above entitled action was consolidated with an action brought in the District Court of the United States for the Western District of Pennsylvania by the Central Hanover Bank and Trust Company, as trustee under the first mortgage of the Duquesne Gas Corporation against said Duquesne Gas Corporation, and said decree appointed your petitioner as receiver in the consolidated action and that at all times subsequent to his qualification your petitioner has acted as receiver in the consolidated action.

Sixth: That the solicitors for said Frank T. Harrington, said Duquesne Gas Corporation and said Central Hanover Bank and Trust Company, as trustee, consented to the entry of said decree.

[fol. 185] Seventh: That on the basis of investigations conducted by your petitioner, your petitioner believes that the Duquesne Gas Corporation has a good cause of action against the promoters of defendant Duquesne Gas Corporation including Maxime H. Furlaud and Carlos Reuter for an accounting and for the restitution of funds fraudulently diverted and misappropriated and of secret and excessive profits. Your petitioner as such receiver has retained the firm of Ehrich, Royall, Wheeler & Walter of the City of New York to take such proceedings as are necessary and proper for the purposes of bringing such suit in this district.

Eighth: That your petitioner is informed that said Maxime H. Furlaud and Carlos Reuter are residents of the County of New York which lies within the territorial limits of the District Court of the United States for the Southern District of New York.

Ninth: That your petitioner verily believes that it is necessary for the protection of the interests of the creditors and stockholders of said Duquesne Gas Corporation and for the interest of the corporation itself, that an ancillary receiver be appointed by this court for the purpose of instituting such action in this district.

Tenth: That no previous application for the relief herein sought has been made.

Wherefore, your petitioner prays for a decree of this court appointing an ancillary receiver of Duquesne Gas Corporation in and for the Southern District of New York

[fol. 186] with all rights and powers to carry into force and and effect the decree of the court of original jurisdiction, and to bring an action against said promoters for an accounting and for the restitution of funds fraudulently diverted and misappropriated and of secret and excessive profits, and to petition for an order to retain solicitors for that purpose; and to do any and all things necessary in connection therewith for the protection of the interests of the estate; and restraining the defendant, its agents, servants, attorneys, creditors and stockholders, and all persons from interfering in any manner with said ancillary receiver in effecting such purposes.

Dated, New York, March 23, 1932.

George W. McCandless, Petitioner.

(Verified by George W. McCandless on March 23, 1932.)

[fol. 187] UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK

FRANK T. HARRINGTON, Complainant,

against

DUQUESNE GAS CORPORATION, Defendant

AFFIDAVIT OF GEORGE W. McCANDLESS

STATE OF NEW YORK,
County of New York, ss:

George W. McCandless, being duly sworn, deposes and says: I am the petitioner in the annexed petition; to the best of my knowledge there are no suits now pending against the defendant corporation for the appointment of a receiver save as set forth in said petition and save that an application has been made for the appointment of an ancillary receiver in the United States District Court for the District of West Virginia but that said application has not been prosecuted as it was discovered that your deponent's supposition that the defendant corporation owned property in West Virginia was erroneous.

George W. McCandless.

Sworn to before me this 23rd day of March, 1932.

Hazel E. Applegate, Notary Public.

[fol. 188] IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 2554 in Equity

FRANK T. HARRINGTON, Complainant,

against

DUQUESNE GAS CORPORATION, Defendant

AMENDED BILL OF COMPLAINT, ANNEXED TO PETITION OF GEORGE W. McCANDLESS

To the Honorable the Judges of the District Court of the United States for the Western District of Pennsylvania:

The complainant for himself and all other stockholders, bondholders, noteholders and creditors of the defendant corporation, who, being interested in the subject matter of this suit should become parties complainant hereto and contribute to the expenses hereof, brings this, his amended bill of complaint:

1. The complainant re-affirms the allegations contained in the first paragraph of his bill of complaint as filed to the effect that this is a suit of a civil nature in equity wherein there is involved a controversy wholly between citizens of various states and wherein the matter and amount in controversy, exclusive of interest and costs, exceeds the sum or value of $3,000.00.

[fol. 189] 2. The complainant re-affirms the allegations contained in the second paragraph of his bill of complaint to the effect that he is a resident and citizen of the City of New York, in the State of New York, and is the owner of 100 shares of non-assessable common stock without nominal or par value, of the defendant corporation. He further avers that although the stock has been but recently transferred into his name, he has been the actual owner of the same in the name of Henry B. H. Ripley since September 5, 1930.

3. The complainant further avers that the defendant is a public utility corporation organized under the laws of the State of Pennsylvania in the year 1930 and at the present time has its principal office in the City of Washington, Washington County, Pennsylvania.

4. The complainant avers upon information and belief that the stockholders, bondholders and noteholders of the defendant are very many in number and are citizens and residents of many states in the United States and for that reason it is impossible for the complainant to join them in this action and the complainant brings this action not only for his own benefit, but also for and on behalf of all other stockholders, bondholders and noteholders of the defendant and in order that their respective rights and equities may be preserved and protected.

5. That the said defendant corporation has an authorized capital stock of Five million (5,000,000) shares without nominal or par value and that it has issued up to the present time six hundred and ninety thousand (690,000) of [fol. 190] said shares. It further avers that the said defendant corporation owns or operates, either directly or through its subsidiaries, natural gas properties in Pennsylvania and West Virginia.

6. The complainant is informed, believes and therefore avers that practically all of the defendant corporation's gross income since its incorporation has been derived from the transportation, distribution and sale of natural gas to public utility corporations and industrial enterprises, and through a subsidiary to domestic consumers, all in the vicinity of the City of Pittsburgh.

7. The complainant is informed, believes and therefore avers that the principal assets of the defendant corporation are the property owned or leased, managed and operated through it and its subsidiaries consisting of over one hundred and twenty-five (125) gas wells in approximately fourteen thousand (14,000) acres of gas properties within a radius of from seven (7) to forty-five (45) miles of the City of Pittsburgh, and that it further owns pipe, equipment, machinery, etc.

8. The liabilities of the said defendant corporation are as follows:

(a) Four million ($4,000,000) Dollars First (closed) Mortgage 6% Convertible Gold Bonds, dated March 15, 1930, and which bear interest at the rate of 6% per annum, payable March 15th and September 15th in every year,

aggregating at the present time $3,965,000. and will mature March 15, 1945, for the payment of which the defendant [fol. 191] corporation is distinctly liable. That interest on the said bonds due September 15, 1931, is in default and has continued in default for a period of more than thirty days.

(b) One million ($1,000,000) Dollars Convertible 6½% Secured Gold Notes, dated March 15, 1930, maturing March 15, 1935, aggregating at the present time $949,000, for the payment of which the defendant corporation is directly liable. That interest on the said notes due September 15, 1931, is in default and has continued in default for a period of more than thirty days thereafter.

9. That in addition to its inability to provide sufficient reserve with which to meet the above mentioned interest on the first mortgage bonds, the corporation has carried on its business at a loss throughout the year 1930 and 1931.

10. The complainant is informed, believes and therefore avers that the company will continue to operate at a loss even without meeting its interest payments on account of bonds and notes, unless a complete reorganization of its business and affairs is accomplished.

11. The complainant is informed, believes and therefore avers that the defendant will not have sufficient funds to enable its business to be properly continued unless a receiver or receivers be appointed who can borrow the necessary funds subject to the approval of this Court, or in some other manner reorganize the said corporation. That such action is especially necessary in view of the fact that certain contracts which the defendant has entered into can [fol. 192] be realized upon at a profit only if the business, as a whole, can be carried on without interruption; and that unless this Honorable Court in view of the present inability of the defendant to meet its due and maturing obligations, will deal with the properties of the defendant as a whole as a trust fund for the payment of its creditors and stockholders and bondholders as their several interests therein shall appear, such properties will be dissipated, wasted and sacrificed, and interminable litigation will ensue to the great irreparable damage and injury of the complainant

and the creditors and other stockholders, bondholders and noteholders of the defendant.

12. The complainant is informed, believes and therefore avers as follows:

Furlaud Reuter & Company, investment bankers of New York City, arranged the acquisition of the properties now owned or leased by defendant, Duquesne Gas Corporation and did acquire the same at a total cost of $2,527,250. Other expenses were incurred such as engineering, auditing, attorney fees, commissions, etc., amounting to $487,750. and working capital of $365,000. was provided, making total actual costs in connection with the acquisition of the properties of approximately $3,380,000. Title to the properties was taken in Kingston Corporation, a corporation organized by and under the laws of the Commonwealth of Pennsylvania on May 28, 1930 with a directorate identical in personnel to that of defendant upon its organization, both of which corporations were owned and controlled at that [fol. 193] time by said Furlaud, Reuter & Company. The properties were at once transferred to Duquesne Gas Corporation, defendant, at a profit to said Kingston Corporation of approximately $1,500,000.

13. The complainant is informed, believes and therefore avers as follows:

That said Furlaud, Reuter & Company originally employed one Ralph E. Davis, a well known civil engineer, to appraise the various properties to be acquired for the defendant. Pursuant to said employment the said Davis appraised a portion thereof at $1,743,520. and upon his indication that his appraisal of the balance of the properties would be less than $1,000,000, a representative of said Furlaud, Reuter & Company took the data upon which he was working to their offices in New York. Thereupon, and without notice to said Davis, the said Furlaud, Reuter & Company employed the firm of Mattison, Davey & Winters to complete the appraisements, and that firm fixed the figure of $4,929,787. as the appraised value of the said balance of said properties. The complainant is informed, believes and therefore avers that at the present time, with gas reserves, the properties are worth in the aggregate approximately $3,200,000.

14. The complainant is informed, believes and therefore avers as follows:

The said 6% Convertible Gold Bonds in the amount of $4,000,000 at par was sold by the said Furlaud Reuter & Company, and/or their nominees, to the public at $975. each or $3,900,000. and of said sum the defendant corpora-
[fol. 194] tion received the benefit of but $900. each or $3,600,000., the balance being retained by said Furlaud, Reuter & Company and/or their nominees.

15. The complainant is informed, believes and therefore avers as follows:

That the said 6½% Gold Notes in amount $1,000,000. at par, were sold by the said Furlaud, Reuter & Company and/or their nominees to the public at $980. each or $980,-000. and of said sum the defendant corporation received the benefit of but $880. each or $880,000., the balance being retained by said Furlaud, Reuter & Company and/or their nominees.

16. The complainant is informed, believes and therefore avers as follows:

That in the capitalization of the defendant, Duquesne Gas Corporation, the said Furlaud, Reuter & Company caused the total amount of stock, actually issued at that time, to-wit 675,000 shares to be issued to them or their nominees at the stated price in the capital structure of the said defendant of 50¢ per share, or a total of $387,500., some of which said stock was sold by them or their said nominees at various prices up to $9.00 per share, as a result of which said Furlaud, Reuter & Company and/or their nominees acquired a net profit in excess of $800,000., none of which said profit was accounted for or was of benefit to the said defendant, Duquesne Gas Corporation.

17. The complainant is informed, believes and therefore avers that aside from the Bondholders' Protective Commit-
[fol. 195] tee, of which he is a member, and which has filed a petition to intervene in these proceedings, another so-called Bondholders' Protective Committee under the influence of the said Furlaud, Reuter & Company and/or their nominees and associates has attempted to suppress the facts surrounding the fraudulent incorporation and capitalization of the defendant by compelling the trustee

of the said First Mortgage Bonds to bring foreclosure proceedings against the defendant corporation without allowing any opportunity whatsoever for a possible reorganization of the business and affairs of the defendant, and your complainant is informed, believes and therefore avers that in the proceeding to foreclose, petitions to intervene have been or will be filed by the Bondholders' Protective Committee of which he is a member, and which has revoked the authority given to the trustee in the said mortgage indenture, and likewise by certain other noteholders and stockholders of the defendant.

18. The complainant is informed, believes and therefore avers that proceedings have been instituted in a State Court of the State of New York in the City of New York, in which alone can jurisdiction be obtained, against the said Furlaud Reuter & Company, its officers, directors, associates and counsel for restitution of all monies and property improperly converted by them from the credit of said Duquesne Gas Corporation, in which said suit for restitution all stockholders, bondholders, noteholders and creditors of said Duquesne Gas Corporation are or should be interested.

[fol. 196] 19. The complainant further avers that the Bondholders' Protective Committee of which he is a member was on November 24, 1931 permitted by the Public Service Commission of the Commonwealth of Pennsylvania to intervene in proceedings instituted by said Commission against the defendant, Duquesne Gas Corporation, to determine its status as a public utility and to determine whether it has been properly organized, incorporated and financed, and that the said Bondholders' Protective Committee is cooperating with the said Public Service Commission of Pennsylvania in its effort to work out a solution of the affairs of the defendant corporation or to reorganize its business and enable it to continue.

20. The complainant has no adequate remedy at law and only through the intervention of this Honorable Court through the appointment of a receiver or receivers for the defendant corporation can full relief be granted, or the rights of your complainant and other stockholders, bondholders, noteholders and creditors be protected.

Wherefore, the complainant being without adequate remedy at law, and in need of the protection of a Court of Equity in securing his rights respectfully prays as follows:

1. That this Honorable Court appoint forthwith a receiver or receivers of all and singular the property of the defendant corporation, of whatsoever nature, with full power to take into his or their possession, hold and manage the same under the direction of this Court, with such [fol. 197] powers as this Court may from time to time grant in its discretion, to bring suit for, collect, receive and take into his or their possession all the property and assets of the defendant corporation, including its books, records, vouchers, checks, moneys, real estate and all other property, real, personal and mixed; to institute, prosecute, become parties to, intervene, compromise or defend any actions at law, or in equity or in any statute for the recovery, protection and maintenance of any of the assets or properties of the defendant corporation, as he or they may deem proper or necessary, including the institution and prosecution of any such ancillary proceedings as he or they may deem advisable; to settle, collect, compound, adjust or to make allowances upon any debts that may be due or owing to the defendant corporation as he or they may deem proper; to pay any such claims or wages as may have priority, and in general, with all the usual powers of receivers in such cases.

2. That the officers, managers, employees, creditors, stockholders, bondholders and noteholders of the defendant corporation and all other persons, firms and corporations be forthwith required to transfer, convey and deliver up to such receiver or receivers possession of all property of the defendant corporation wheresoever situated.

3. That all persons, firms and corporations be enjoined forthwith from instituting, commencing, prosecuting or continuing the prosecution of any actions, suits, or proceedings at law or in equity or under any statute against defendant corporation, from levying or serving any attach- [fol. 198] ments or executions or other processes upon the defendant corporation save and except the filing of mechanics' or other statutory liens and generally that all persons, firms and corporations be enjoined from doing any

act to interfere with said receivers in their possession of the property of the defendant corporation.

4. That your complainant may have such other and further relief as may be just or proper.

Patterson, Sherrard & Miller, Solicitors for Complainant.

(Verified by Frank T. Harrington, December 31, 1931.)

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 2554—In Equity

FRANK T. HARRINGTON, Complainant,

vs.

DUQUESNE GAS CORPORATION, Defendant

AMENDMENT TO PRAYER, ANNEXED TO PETITION OF GEORGE W. MCCANDLESS

The complainant for himself and all other stockholders, bondholders, noteholders and creditors of the defendant corporation hereby amends the prayer of his amended bill of complaint so that it shall read as follows:

[fol. 199] 1. That the rights of the complainant and all other stockholders, bondholders, noteholders and creditors of the defendant corporation may be ascertained, decreed and determined; that this Honorable Court will fully administer the fund in which the complainant and all other stockholders, bondholders, noteholders and creditors are interested constituting all the property and assets of the defendant in accordance with the rights, equities, liens and priorities, if any, existing thereon and will enforce and decree the rights, equities, liens and priorities of the creditors, bondholders, noteholders and stockholders of the defendant as the same may finally be ascertained and decreed by this Court.

2. That this Honorable Court appoint forthwith a receiver or receivers of all and singular the property of the defendant corporation, of whatsoever nature, with full

power to take into his or their possession, hold and manage the same under the direction of this Court, with such powers as this Court may from time to time grant in its discretion, to bring suit for, collect, receive and take into his or their possession all the property and assets of defendant corporation, including its books, records, vouchers, checks, moneys, real estate and all other property, real, personal and mixed; to institute, prosecute, become parties to, intervene in, compromise or defend any actions at law or in equity, or under any statute for the recovery, protection and maintenance of any of the assets or properties of defendant corporation, as he or they may deem proper or necessary, including the institution and prosecution of any such ancillary proceedings as he or they deem advisable; [fol. 200] to settle, collect, compound, adjust or make allowances upon any debts that may be due or owing to the defendant corporation as he or they may deem proper; to pay any such claims or wages as may have priority, and in general, with all the usual powers of receivers in such cases.

3. That the officers, managers, employees, creditors, stockholders, bondholders, and noteholders, of the defendant corporation, and all other persons, firms and corporations be forthwith required to transfer, convey and deliver up to such receiver or receivers possession of all property of the defendant corporation wheresoever situated.

4. That all persons, firms and corporations be enjoined forthwith from instituting, commencing, prosecuting or continuing the prosecution of any actions, suits or proceedings at law or in equity, or under any statute, against defendant corporation, from levying or serving any attachments or executions or other processes upon the defendant corporation save and except the filing of mechanics' or other statutory liens, and generally that all persons, firms and corporations be enjoined from doing any act to interfere with said receivers in their possession of the property of the defendant corporation.

5. That your complainant may have such other and further relief as may be just or proper.

Patterson, Sherrard & Miller, Solicitors for Complainant.

Certified from the records this 22nd day of March, 1932.

J. Wood Clark, Clerk.

[fol. 201] IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 2554—In Equity

FRANK T. HARRINGTON, Complainant,

vs.

DUQUESNE GAS CORPORATION, Defendant.

DEFENDANT'S ANSWER TO AMENDED BILL OF COMPLAINT, ANNEXED TO PETITION OF GEORGE W. McCANDLESS

Duquesne Gas Corporation, the defendant, answers as follows the averments of the amended bill of complaint:

1. Defendant admits the averments of paragraph 1.

2. Defendant admits that complainant is the owner of 100 shares of defendant's common stock without nominal or par value. Defendant avers that complainant became the holder of record of said shares on the 21st day of September, 1931 except for the complainant's own averment that defendant has no knowledge, information, or source of information as to the date when complainant became the actual as distinguished from the record owner of said shares.

3. Answering the averments of paragraph 3, defendant [fol. 202] denies that it was organized under any statute of Pennsylvania especially applicable to public utility corporations, and avers that it was organized and now exists under and by virtue of the General Corporation Act of 1874, its amendments and supplements. Defendant avers that its business is the sale of gas to large industrial and public utility consumers under special contracts in each case, and that it does not itself sell any gas to domestic consumers. Defendant admits that Victor Gas Company, a subsidiary of the defendant, sells gas to domestic consumers, but avers that the domestic consumers to whom said Victor Gas Company sells gas do not exceed and never have exceeded the number of six. Said Victor Gas Company is a public utility corporation under the laws of Pennsylvania and is subject to regulation and control as such by the Public Service Commission of Pennsylvania. Defendant avers that a pro-

ceeding is now in progress before said Public Service Commission at Docket No. 8879 for the purpose, inter alia, of ascertaining and determining whether or not the defendant is a public utility corporation. The defendant neither admits nor denies that it is a public utility corporation, but submits the complainant's averment in that behalf to adjudication by this Court.

4. Defendant admits the averments of paragraph 4.

5. Defendant admits the averments of paragraph 5 except that defendant denies that it owns natural gas properties in West Virginia, directly or indirectly. Defendant avers that its natural gas properties in West Virginia, [fol. 203] whether held directly or indirectly through subsidiaries, are not owned in fee, but are held under lease.

6. Defendant admits the averments of paragraph 6, the said admission as to domestic consumers, however, being qualified by the averments of paragraph 3 hereof.

7. Defendant admits the averments of paragraph 7.

8. (a) Defendant admits the issuance of $4,000,000 par value of First Mortgage 6% Convertible Gold Bonds of the description alleged by complainant, that $3,965,000 thereof are outstanding, and that the interest due thereon September 15, 1931 under the terms thereof has not been paid. Defendant denies that the said bonds will mature September 15, 1945, and avers that the same are now due under the terms thereof by virtue of acceleration of maturity due to declaration of default. Defendant neither admits nor denies that it is liable on the said bonds but leaves that issue to an adjudication, hereby referring to defendant's answer in a suit in this Court entitled "Central Hanover Bank & Trust Company, as trustee under First Mortgage of Duquesne Gas Corporation dated March 15, 1930, Plaintiff, against Duquesne Gas Corporation, Defendant, No. 2577, In Equity". A copy of said answer is hereto annexed, marked Exhibit 1 and made part hereof.

(b) Defendant admits that there are now issued and outstanding $949,000 par value of Convertible 6½% Secured [fol. 204] Gold Notes of the description alleged by complainant. Defendant neither admits nor denies that it is liable thereon, but leaves that issue for adjudication by this

Court, hereby averring that the defendant's incorporation and right to do business were not submitted to or approved by the Public Service Commission of Pennsylvania, that no certificate of notification was filed with said body on the issuance of said notes, and that no action was had or taken by said commission in that behalf; and the defendant hereby refers to the averments of said Exhibit 1 in respect of the proceeding before said Commission now pending at its Docket No. 8879. Defendant admits that the interest due September 15, 1931 under the terms of said notes has not been paid.

9. Defendant admits the averments of paragraph 9.

10. Defendant denies that it is or has been doing business at a loss even without paying or providing for the interest on said bonds and notes, and avers that it is and has been doing business at a loss if the said interest be charged but at a profit if said interest be not charged; and defendant avers on information and belief that if no charge or deduction were to be made for said interest, defendant's operations would be at a profit. Defendant admits that, said interest being charged or deducted, it cannot continue to operate otherwise than at a loss unless there be a complete reorganization of the defendant in respect of its capital structure.

11. Answering paragraph 11, defendant denies that it is unable to continue to carry on its business without the [fol. 205] appointment of a receiver who can borrow funds for that purpose, and avers that the defendant now has sufficient cash resources to carry on its business and pay its current expenses. Defendant admits, however, that it cannot without greater working capital than it now has, continue to operate its business and pay, in addition to current expenses, interest upon the above mentioned bonds and notes. Defendant further admits that it cannot permanently carry on its business without reorganization and substantial changes in its capital structure. Defendant denies the complainant's averment that the defendant is presently unable to meet its due and maturing obligations, and avers that it is able to meet such obligations except the said bonds and notes and interest thereon. Defendant denies that there are any pending suits or attachments by creditors whereby the defendant's properties will be dis-

sipated, wasted and sacrificed, but admits that a suit has been commenced in this Court at No. 2577 in Equity, as aforesaid, for the principal purpose of foreclosure on said $3,965,000, face amount of First Mortgage 6% Convertible Gold Bonds. Defendant further admits that the rights, liens, priorities and securities of the holders of the defendant's said outstanding bonds, notes and stocks should be ascertained, determined, adjudicated and declared by this Court. Defendant further admits that in the opinion of the defendant this cannot be done, or the rights of all parties in interest be fairly and justly determined, or a reorganization of the defendant be effected without the interposition of this Court and the appointment of a general receiver of [fol. 206] all the defendant's properties and franchises.

12-16. Answering the averments of 12-16, both inclusive, defendant admits that said Ralph E. Davis appraised a portion of the properties now held by the defendant and that said Mattison, Davey & Winters appraised a portion thereof and that the appraisal by said Davis showed a value of the property appraised by him of $1,743,520. As to complainant's averment that the appraisal of the remainder of the properties by Mattison, Davey & Winters showed a valuation of $4,929,787, defendant avers that the aggregate of the two appraisements was $6,929,501, but that the total valuation used by the defendant's board of directors in connection with the issuance of securities was $6,673.307. Defendant did not itself employ either said Ralph E. Davis or said Mattison, Davey & Winters, and does not know what may have passed between Furlaud, Reuter & Company and said Ralph E. Davis as to the figure at which said Ralph E. Davis would have appraised the portion of defendant's properties subsequently appraised by Mattison, Davey & Winters, and does not know whether said last mentioned firm did or did not give notice to said Davis or consult with said Davis before making its appraisal. Defendant denies on information and belief that the present value of the properties now held by defendant is $3,200,000, and avers on information and belief that the present value of said properties does not exceed approximately $2,200,000. Defendant does not know and is not informed at what figure or figures said Furlaud, [fol. 207] Reuter & Company or any other person, may have disposed of the defendant's securities to the public.

17. Answering the averments of paragraph 17, defendant admits that a suit has been commenced as hereinbefore stated for the foreclosure of the above mentioned First Mortgage Bonds, and, on information and belief, that suit was brought at the instance of a Bondholders' Protective Committee other than that of which complainant is a member; but defendant avers that it is without knowledge as to the other matters alleged by complainant in said paragraph.

18. Defendant has no knowledge or information as to whether the suit described by the complainant in paragraph 18 is under contemplation or by whom as plaintiffs, or any knowledge or information in regard to any such suit other than the complainant's averments in that behalf. Otherwise, the defendant is unable to answer the averments of paragraph 18.

19. Defendant admits that said Bondholders' Protective Committee has been permitted to intervene in said proceeding now pending before the Public Service Commission of Pennsylvania. As to whether said Bondholders' Protective Committee is co-operating with said Commission or to what extent, the defendant has no knowledge or information.

20. Defendant admits the averments of paragraph 20.
[fol. 208] And for further answer, defendant avers:

21. Reference is made to said suit of foreclosure at No. 2577 in Equity, and particularly to this defendant's answer therein, being Exhibit 1 hereto attached, from which it appears that a substantial question is raised as to the validity of said $3,965,000 of First Mortgage Bonds now outstanding, and particularly as to the validity of $1,300,000 thereof. In case said First Mortgage Bonds, or any portion thereof, shall be held invalid and securities heretofore issued by the defendant subsequent in lien or security to said First Mortgage Bonds held valid, said First Mortgage Bonds or such invalid portion thereof, either would not be paid or would be subsequent in lien and security to other securities of the defendant by their terms subsequent in lien and security to said First Mortgage Bonds. So that there is inherent in the present situation a conflict, or potential conflict, in interest, between the holders or some of the holders, of the

First Mortgage Bonds and the holders of securities by their terms subsequent thereto.

22. The complainant herein avers that he is a stockholder, but in paragraph 17 of said amended bill of complaint he avers further that he is a member of a Bondholder's Protective Committee. Defendant avers on information and belief that the said committee is a committee formed in the interest of the holders of First Mortgage Bonds and that the primary interest of the complainant herein is in respect of the First Mortgage Bonds. Defendant further avers on information and belief that the complainant and the said committee of which he is a member are acting in association and co-operation with divers in- [fol. 209] vestment banking and brokerage houses by which the defendant's First Mortgage Bonds were marketed, although certain of said houses may have marketed, in addition to said First Mortgage Bonds, other securities of the defendant.

23. In said amended bill of complaint, particularly in paragraph 13 to 16 thereof, it is charged that Furlaud Reuter & Company, an investment banking house, has committed fraud upon defendant in connection with certain of the defendant's securities and is bound to make restitution.

24. Defendant avers on information and belief that said foreclosure suit at No. 2577 in Equity has been brought pursuant to demand made upon the trustee by a Bondholders' Protective Committee for holders of First Mortgage Bonds other than the Bondholders' Protective Committee of which the complainant is a member, and that said committee consists of persons connected with investment banking houses by which defendant's First Mortgage Bonds were marketed.

25. In view of the facts averred in paragraphs 22, 23 and 24 hereof, it appears that both complainants now seeking the appointment of a receiver for the defendant, to-wit, Central Hanover Bank & Trust Company as trustee at No. 2577 in Equity and the complainant in this suit, and the persons at whose instance the said complainants are acting in seeking the appointment of a receiver, are primarily interested in establishing the validity, priority, and lien of the defendant's First Mortgage Bonds as distinguished from any other class or classes of defendant's securities, where-

[fol. 210] as, as defendant submits, the ultimate solution of the defendant's present difficulties must be worked out through a general receivership, a full and impartial investigation of all the circumstances under which the defendant's securities were issued and distributed to the public, and an adjudication of the rights, liens, and priorities of all classes of security holders and creditors.

Wherefore, the defendant prays:

1. That the rights of all creditors of the defendant and of the holders of the defendant's First Mortgage Bonds, secured notes, and stock may be ascertained, decreed, and determined; that this Court will fully administer the fund in which the defendant's creditors and holders of the defendant's securities are interested, constituting all the property and assets of the defendant, in accordance with the rights, equities, liens and priorities of the creditors and stockholders of the defendant as the same finally may be ascertained and decreed by this Court.

2. That this Court, for the purpose of granting the relief prayed for herein and to protect the rights and interests of all the stockholders and creditors of the defendant, take over unto itself the jurisdiction and control of all the assets and property of the defendant of every kind and description whatsoever, and that, pending this suit, it grant such specific relief as from time to time may be expedient and appropriate to maintain such jurisdiction and control.

3. That for the purpose of preserving the unity and integrity of the property and assets of the defendant and of [fol. 211] preventing disruption thereof by any separate executions, attachments, or levies that may be attempted during the pendency of this suit, a receiver or receivers be appointed of the defendant and all of its property and assets, real, personal, and mixed, of whatsoever kind and description and wheresoever situate, and all the tolls, earnings, rents, issues, profits, revenues, and income thereof, with the usual powers of general receivers and with full power and authority to take possession of the properties, real and personal, premises, easements, franchises, leases, rights, privileges, and interests of the defendant of whatsoever kind and character, and to manage and operate the same and to continue the business of the defendant and to collect

and receive the tolls, earnings, issues, rents, profits, revenues, and income thereof, and every part thereof, and to apply the same as this Court from time to time may order and decree; and that such further powers and authority as to this Court may seem meet and proper may be granted by it to any receiver or receivers so appointed.

4. That the properties and assets and business of the defendant may be ordered to be sold as an entirety, with such exceptions and in such manner and upon such terms and conditions as this Court shall deem just and equitable, and that any such order shall make proper and suitable provisions for the protection of all just and lawful equities, rights, priorities, claims, and liens of the creditors of the defendant and shall provide for the sale of the property, assets, and business of the defendant, subject to or free and clear from any and all liens and incumbrances, and that [fol. 212] the proceeds of any such sale may be distributed by and under the direction of this Court among the creditors of the defendant adjudicated by the Court to have interests therein and such others, if any, as this Court may adjudicate to be entitled thereto.

5. That pending this suit an injunction may issue out of and under the seal of this Court enjoining and restraining all persons, including creditors of the defendant, from levying executions upon, attaching, or intermeddling with or taking possession of any of the property or assets of the defendant.

6. That the Court will make such other and further decrees and orders from time to time as may be just, meet and proper for the administration of the defendant's property and assets by the Court by its receiver or receivers and to ascertain, determine, adjudicate, protect and assure the rights of creditors of the defendant and any and all other persons having any interest, legal or equitable, in or to the property and assets of the defendant.

Duquesne Gas Corporation, By Charles C. Nuss, President. Maynard Teall, Reed, Smith, Shaw & McClay, Solicitors for the Defendant. Hause, Evans & Baker, Harrisburg, Pennsylvania, Of Counsel.

(Verified by Charles C. Nuss, President, Jan. 15, 1932.)

[fol. 213] CERTIFIED COPY OF RESOLUTION OF BOARD OF DIRECTORS OF DUQUESNE GAS CORPORATION, ANNEXED TO ANSWER IN HARRINGTON v. DUQUESNE GAS CORPORATION

Whereas, in the District Court of the United States for the Western District of Pennsylvania, at No. 2554 in Equity, Frank T. Harrington, as complainant, has filed suit against this corporation for a receiver and for relief as prayed for in his bill of complaint, an answer having been filed thereto by C. C. Nuss, President of the corporation; and

Whereas, on January 12, 1932 an amended bill of complaint was filed by the complainant in said cause, to which no answer on the part of this corporation has as yet been filed; and

Whereas in the said Court at No. 2577 in Equity, Central Hanover Bank & Trust Company, as trustee under the First Mortgage Indenture, has filed bill of complaint for foreclosure and other relief to which answer has been filed by this corporation through the agency of C. C. Nuss as President; and

Whereas in connection with said last mentioned proceeding, formal application has been made to the Court for the appointment of a receiver; and

Whereas the said suits and the status of the company with respect to its outstanding securities present a very complicated situation on which it is necessary for the President of the company to keep in close touch with counsel and [fol. 214] possibly to take such action as his judgment may commend without previous authorization of this board as to each specific action proposed to be taken by the corporation.

Resolved, that C. C. Nuss, the President of this corporation, be, and hereby is, authorized and empowered after consultation with counsel, to take such action on behalf of this corporation as his judgment may commend in connection with either of the before mentioned suits or any other suits entered by or against this corporation arising in connection with its outstanding securities or any of the same or its obligations with respect thereto.

Resolved, further, that C. C. Nuss, the President of this corporation, be, and hereby is, authorized in his discretion, and on behalf of this corporation, to consent to the appointment of a receiver for this corporation in either of the above

mentioned suits or any other suit; provided that the said C. C. Nuss shall first consult with counsel in regard thereto.

[fol. 215] STATE OF PENNSYLVANIA,
County of Alleghany, ss:

I, Harry J. Steele, Secretary of Duquesne Gas Corporation, hereby certify that the foregoing is a true and correct copy of preambles and resolutions adopted by the Board of Directors of this corporation at a meeting duly held on January 15, 1932.

Harry J. Steele, Secretary. (Corp. Seal.)

Sworn to and subscribed before me this 15th day of January, A. D. 1932.

Fern F. Mesing, Notary Public. (Notarial Seal.)

Certified from the record this 22nd day of March, 1932.

J. Wood Clark, Clerk.

[fol. 216] IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Equity No. 2577

CENTRAL HANOVER BANK & TRUST COMPANY, as Trustee under First Mortgage of Duquesne Gas Corporation dated March 15, 1930, Plaintiff,

against

DUQUESNE GAS CORPORATION, Defendant

EXHIBIT I, ANNEXED TO ANSWER OF DUQUESNE GAS CORPORATION

Duquesne Gas Corporation, the defendant herein, admits the averments of the Bill of Complaint made in paragraphs First to Fifteenth (both inclusive) thereof, except it does not admit (1) that it, the said defendant, is a corporation duly organized and existing under the laws of Pennsylvania, or (2) that all said $3,965,000.00 of First Mortgage Bonds now outstanding are in the hands of bona fide holders thereof for value, or (3) that all said $3,965,000.00 of bonds now outstanding, and particularly $1,300,000.00 par value thereof, are the lawfully issued, valid, and binding obliga-

tions of the defendant, or (4) that the said mortgage creates and establishes the first lien it purports to create and establish; but the defendant leaves the said not admitted matters [fol. 217] for determination and adjudication upon the facts hereinafter stated:

Sixteenth: The defendant corporation was organized and created under the Act of Assembly of the Commonwealth of Pennsylvania of April 29, 1874, P. L. 73, and its amendments and supplements, with charter powers as follows:

"Said corporation is formed for the purpose of mining, drilling, boring for and producing petroleum, oil, natural gas and other minerals and substances, incidentally developed, and the manufacturing, buying, selling, trading and dealing in the products and by-products thereof; the acquiring and holding of such lands, lease., mining and drilling rights, and the construction, erection and operation of such lines, pipe lines, buildings, machinery and appliances as may be necessary and convenient therefor and the transaction of all such business as is necessary and incidental thereto."

Seventeenth: At the time of organization and issuance of its securities, including the said First Mortgage Bonds, the defendant was advised by counsel that it was not a public service company or subject to the Public Service Company Law of Pennsylvania (Act of July 26, 1913, P. L. 1374); accordingly, the defendant did not seek or obtain the approval of said Public Service Commission to be incorporated, organized, or created, or to begin the exercise of any right, power, franchise or privilege and did not on or prior [fol. 218] to the date it issued its securities, including said First Mortgage Bonds, file with said Commission its certificates of notification covering the issuance of said securities, or with respect to either of said matters, take any proceeding before said Commission.

Eighteenth: On April 28, 1931, the said Public Service Commission, purporting to act under said Public Service Company Law, issued its order at Complaint Docket No. 8879 against this defendant as follows:

"That an inquiry and investigation upon the Commission's own motion be and is hereby instituted into the status of the Duquesne Gas Corporation, and its failure to comply

with the provisions of the laws of the Commonwealth applicable to public service companies; said inquiry to be scheduled for hearing and/or argument if desired not less than fifteen (15) days from the date of service hereof upon notice."

Said order was duly served upon the defendant, and a certified copy thereof is attached hereto, marked Exhibit "A", and made part hereof.

On September 1, 1931, said Commission, at the same docket number, issued a further order against defendant as follows:

"That the inquiry and investigation heretofore instituted by the Commission on its own motion under date of April 28, 1931, be and is hereby extended to include an inquiry and [fol. 219] investigation into the promotion, organization, financing and acquisition of the properties of the Duquesne Gas Corporation, and its failure to comply with the provisions of the laws of the Commonwealth applicable to public service companies."

Said further order was duly served on this defendant, and a certified copy thereof is hereto attached, marked Exhibit "B", and made part hereof.

On November 24, 1931, at the same docket number, a further order was made in said proceeding as follows:

"That S. P. Woodward, Frank T. Harrington, C. E. Wheeler and V. Blake Allison, constituting a Bondholders' Protective Committee of Duquesne Gas Corporation be and are hereby permitted to intervene in said complaint."

Said last mentioned order was duly served on this defendant, and the same is annexed hereto, marked Exhibit "C", and made part hereof.

Nineteenth: Said Commission has not as yet terminated said proceeding at its Docket No. 8879 or made any determination as to the sufficiency of this defendant's organization as a corporation or as to the validity of any of this defendant's outstanding securities or of the issuance thereof, but the said proceeding at Docket No. 8879 is still pending before said Commission and undetermined.

[fol. 220] The defendant avers the following facts in respect of, particularly, the above mentioned $1,300,000 par value of said First Mortgage Bonds:

Twentieth: The defendant corporation was organized on or about February 13, 1930, with authorized capital stock of 1,000 shares without nominal or par value having a stated capital of $500.00, which latter amount was paid in cash. On March 5, 1930, the defendant's organization meeting having been held February 21, 1930, the Board of Directors of the defendant authorized an increase of capital stock from 1,000 shares as aforesaid to 1,250,000 shares without nominal or par value having a stated capital of $625,000.00 and also authorized an increase of indebtedness from nothing to $10,000,000.00, and called a special meeting of stockholders for April 3, 1930, for the purpose, inter alia, of considering and acting upon the said increases of capital stock and indebtedness.

Twenty-first: Said meeting of stockholders was held on said appointed day, April 3, 1930, and said increases of capital stock and indebtedness were authorized and approved by the stockholders; the stockholders waived preemptive rights on the new stock so authorized; an amendment to the by-laws was approved providing that the stockholders should not have pre-emptive rights on new stock; the directors were authorized to issue stock up to 1,250,000 shares for such consideration as they should approve; the directors were authorized to accept an offer of Furlaud & Company, Inc., a New York corporation, to buy 139,000 shares of the just authorized stock for fifty cents per share, [fol. 221] or $69,500.00; engineers' and accountants' reports were submitted on the properties intended to be acquired by the company; the indenture under which said First Mortgage Bonds were issued was approved; a General Mortgage Indenture was approved under which $1,000,000.00 of General Mortgage 6½% Gold Bonds might be issued; and an agreement was approved under which Secured Gold Notes might be issued to the amount of $1,000,000.00 secured by $1,000,000.00 of said General Mortgage 6½% Gold Bonds.

Twenty-second: On April 7, 1930, a special meeting of the Board of Directors of the defendant corporation was held at which the following business was transacted: (1) Said offer of Furlaud & Company, Inc., to buy 139,000

shares of stock for $69,500.00 was accepted; (2) execution and delivery of the above mentioned indentures and agreement were authorized; (3) 400,000 shares of stock were set apart to meet the conversion requirements of the First Mortgage Bonds and Secured Notes; (4) a proposed agreement between Kingston Corporation (a New Jersey corporation) and the defendant was authorized and approved under which the defendant was to acquire its properties, the substance of said agreement being as follows:

(a) Kingston Corporation to transfer the said properties to the defendant corporation;

(b) The defendant corporation to pay the Kingston Corporation therefor by discharging $3,015,000.00 of indebted-
[fol. 222] ness owing by Kingston Corporation to Central Hanover Bank & Trust Company, the complainant herein, and by delivering to said Kingston Corporation $1,300,-000.00 par value of this defendant's First Mortgage Bonds and 535,000 shares of this defendant's stock:

(5) an offer of said Furlaud & Company, Inc., to buy $2,700,000 par value of said First Mortgage Bonds at $900.00 and accrued interest per bond and $1,000,000.00 par value of said Secured Notes at $880.00 and accrued interest per note was accepted.

Twenty-third: Shortly after the said meeting the Kingston Corporation transferred said properties to the defendant corporation and the defendant corporation paid therefor as agreed; and said $2,700,000.00 of First Mortgage Bonds were delivered to Furlaud & Company, Inc., for $900.00 per Bond in cash and $1,000,000.00 of said Secured Notes were delivered to said Furlaud & Company, Inc., for $880.00 per note in cash, with accrued interest in each case.

Twenty-fourth: The defendant avers on information and belief that said Kingston Corporation was a subsidiary of said Furlaud & Company, Inc., and in said transaction was subject to the control of and in fact was controlled by said Furlaud & Company, Inc. Defendant further alleges, also upon information and belief, that the said properties transferred to the defendant corporation for, in effect, $3,015,-000.00 in cash, $1,300,000.00 of First Mortgage Bonds, and
[fol. 223] 535,000 shares of stock had cost the said King-

ston Corporation, for the properties and all expenses in connection with the acquirement thereof, only $3,015,000.00.

Twenty-fifth: Defendant alleges on information and belief that at the time and times of all the directors' and stockholders' meetings hereinbefore referred to, said Furlaud & Company, Inc., owned all the stock of the defendant then outstanding except directors' qualifying shares, and the defendant's directors were the nominees of and were under the control of and in fact were controlled by said Furlaud & Company, Inc., and said Furlaud & Company, Inc., was the promoter of the defendant corporation and its organization and of the sale of the defendant's First Mortgage Bonds and other securities.

Twenty-sixth: On April 7, 1930, subsequent to the meeting of the Board of Directors of the defendant corporation above referred to and held on the same day, the then directors of the defendant corporation, three in number, resigned, and the number of the Board of Directors of the defendant was increased to six, and six new directors, and also a new President and a new treasurer, were elected.

Twenty-seventh: When the said transaction between the defendant corporation and Kingston Corporation was authorized and approved as above stated, the stockholders and directors of the defendant had before them reports of engineers of high standing showing the gas reserves and plant [fol. 224] and equipment to have a value of $6,923,501.00 based upon a certain program of development; but in said reports the gas reserves of non-operating properties held merely under lease were included in the valuation on a gas reserve basis, whereas, for the issuance of bonds thereon which was made subsequent to said reports, the said non-operating properties, as defendant alleges on information and belief, should have been placed on a value-of-acreage basis. The defendant avers on information and belief that on a value-of-acreage basis for non-operating properties held under lease the properties acquired by the defendant corporation from Kingston Corporation did not have a value in excess of $3,015,000.00, which was the amount, or the approximate amount including expenses, paid therefor by said Kingston Corporation.

Twenty-eighth: In view of the facts hereinabove stated, the defendant does not know, and therefore leaves to ju-

dicial determination, whether said $1,300,000.00 of First Mortgage Bonds delivered to Kingston Corporation in connection with the acquirement of the defendant's properties did or did not constitute a fictitious issue of securities for which the issuer received no value.

Twenty-ninth: Defendant does not know who are the persons now holding said $1,300,000.00 of bonds delivered to said Kingston Corporation, or whether the holders thereof acquired the same for value or with or without notice of the matters hereinbefore averred, or whether said $1,300,000.00 of bonds are valid obligations of the defendant cor-
[fol. 225] poration or entitled to the lien and security of the said First Mortgage Indenture.

Duquesne Gas Corporation, by C. C. Nuss, President.

Maynard Teall, Reed, Smith, Shaw & McClay, Solicitors for Defendant. Hause, Evans & Baker, Harrisburg, Pennsylvania, of Counsel.

(Verified by C. C. Nuss on December 7, 1931.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

No. 2554. In Equity

FRANK T. HARRINGTON, Plaintiff,

vs.

DUQUESNE GAS CORPORATION, Defendant

PER CURIAM DECREE, ANNEXED TO PETITION OF GEORGE W. McCANDLESS

And now, to-wit, January 19, 1932, the above cause came on for further hearing upon the bill of complaint as amended and the answer of the respondent as amended, [fol. 226] and it appearing to this Court that another action, brought by the Central Hanover Bank and Trust Company as Trustee under the first mortgage of the Duquesne Gas Corporation dated as of March 15, 1930, against said Duquesne Gas Corporation at No. 2577 in Equity, seeks the foreclosure of the said first mortgage on the properties of

the above named defendant, and that a complaint and answer have been filed therein, and the plaintiff in this action, No. 2554 in Equity, appearing by his solicitor, Clark Miller, Esq., and the defendant, by its solicitor, Maynard Teall, Esq., and the plaintiff in the proceeding at No. 2577 in Equity appearing by its counsel, Frank B. Ingersoll, Esq., and the defendant in said action by its counsel, Maynard Teall, Esq., and all of said counsel consenting to the entry of this order and the Court being fully advised of the premises, it is now

Ordered, adjudged and decreed:

1. That George W. McCandless, of the City of Pittsburgh, Pennsylvania, be and he is hereby appointed receiver of all and singular the assets, lands, tenements and hereditaments of the defendant, the Duquesne Gas Corporation, and all of its property, real, personal and mixed, of every nature and kind whatsoever, including all pipe lines, machinery, appliances, fittings and equipment belonging to or connected therewith, and all oil and gas rights, leases and leaseholds and the wells, derricks, drain pipes, casing, tubing, machinery and appliances and equipment thereon, connected therewith or belonging thereto, and all leases, contracts, stocks, bonds, obligations, choses in action, ac- [fol. 227] counts and rights owned by, belonging to or due to the defendant company, and all rights, franchises, income and profits granted to, acquired by or belonging to the defendant company.

2. That said receiver shall, before entering upon his duties hereunder, give and file with the Court a bond in the penal sum of $50,000 with surety or sureties approved by this Court, and conditioned that he will faithfully perform his duty as receiver herein and in any ancillary proceedings wherein he may be appointed, and will well and truly account for any and all moneys or property coming into his hands as such receiver, in accordance with the provisions of this order or any other order which may from time to time be issued by this Court, and abide by and perform all things which he is herein or may hereafter be directed to perform in this cause or in any ancillary proceedings wherein he is appointed.

3. Upon the filing and approval of the said bond, said receiver be and he is hereby authorized, empowered and

directed to take immediate possession of all and singular the assets above described or referred to, wherever the same may be situate or found, and, until a further order of this Court, to continue the operation of the business of the defendant company and every part or portion thereof and to run, manage and conduct such business under leases, contracts or arrangements as heretofore run, managed, conducted and operated by the defendant company, but the Court expressly reserves to itself the right to pass upon, disapprove, disavow and cancel any and all leases, arrangements and contracts of every nature, kind and de-
[fol. 228] scription under or by virtue of which the defendant company has been or is now operating any of its property.

The receiver shall exercise all such powers as are usually exercised by receivers and all such as are necessary, useful or convenient to the proper conduct by him of the business of the corporation, and he shall discharge all such duties as are within the line, scope and purpose of his appointment, including full power and authority to demand, sue for, collect, receive and take into possession the goods, chattels, rights, credits, moneys, effects, books and property of every description belonging to said defendant, Duquesne Gas Corporation, and including power to do any and all other acts which may be necessary to preserve the rights and properties of said defendant, Duquesne Gas Corporation. The receiver shall also exercise such further powers as the Court may from time to time grant.

4. That the defendant corporation and each and every of its officers, directors, agents and employees and all other persons, associations and corporations are now and hereby ordered, commanded and directed to turn over and deliver to such receiver, or his duly constituted representatives, any and all of the books of account, records, vouchers, checks, deeds, leases, contracts, agreements, notes, accounts, moneys, stocks, bonds, obligations and property of every kind and nature, real, personal and mixed, now in or which may hereafter come into his or their hands, control or possession.

That the defendant corporation and each and every of
[fol. 229] its said officers, directors, agents and employees and all other persons, associations and corporations be and they are now and hereby restrained and enjoined during

the pendency of this cause and the administration of the said receiver from transferring, selling, disposing of, or interfering with any of the property of the defendant corporation and from taking possession of or in any way interfering with the same or any part thereof, and from disturbing, preventing, or in any way interfering with the receiver in his possession, control, operation or management of the property, or any part thereof, of the defendant company over which the said receiver is hereby appointed as such; and from instituting, commencing, prosecuting or continuing the prosecution of, except as herein provided, any actions, suits or proceedings at law or in equity against the defendant corporation, from levying or serving any attachments or executions or other processes upon the defendant corporation save and except the filing of mechanics' or other statutory liens and save also as herein provided; and from disturbing, preventing or in any way interfering with the receiver in the discharge of his duties hereunder.

5. As soon as may be after the entry of this order, the receiver shall segregate and sequester for the benefit of the Trustee, plaintiff, at No. 2577 in Equity, and the holders of the first mortgage bonds of the defendant and appurtenant coupons secured by the first mortgage, all income, rents, issues and profits from the property, subject to the lien of the first mortgage, and apply the same to and for their benefit, subject only to such expenses and other uses [fol. 230] as may be legally and properly incurred in the operation and preservation of said property, having due regard to the rights of the said bondholders and the Trustee, plaintiff, at No. 2557 in Equity, and to the protection of the security of the first mortgage.

The receiver, as soon as practical and convenient, shall cause to be prepared a schedule of all and singular the property of the defendant, subject to the lien of the first mortgage, which may come into his possession as such receiver, and shall file the same with the Clerk of this Court, and he is directed to keep separate accounts of his transactions as such receiver and of such moneys and other property and assets which may from time to time come into his hands as such receiver, and of the rents, issues, and profits of the property and assets, subject to the lien of the first mortgage, and to make report thereof from time to time as this Court may direct, but said schedule, account and/or reports

shall not be conclusive on the Trustee, plaintiff, in the action at No. 2577 in Equity, it being further provided that said segregation and sequestration and separate accounting shall be without prejudice to any rights of the parties in said action at No. 2577 in Equity and shall not be taken as any adjudication of the rights of the first mortgage bondholders or any other class of security holders.

6. This action and that at No. 2577 in Equity, in which the Central Hanover Bank and Trust Company, as Trustee, is plaintiff, and the Duquesne Gas Corporation is defendant, be and the same are hereby consolidated and that action and all the proceedings therein shall hereafter be brought and [fol. 231] docketed under the title, number and term of this action, said consolidation being made without prejudice to the rights of the parties as accrued under the pleadings heretofore filed in said action at No. 2577 in Equity.

7. The Court reserves the full right and jurisdiction from time to time to make such further orders or decrees amplifying, extending, limiting or otherwise modifying this order as to it may at any time seem proper and in all respects and at all times to regulate and control the conduct of the receiver.

Per Curiam.

S.

Certified from the record this 22nd day of March, 1932.
J. Wood Clark, Clerk.

District Court of the United States, Western District of Pennsylvania

No. 2554 in Equity

Frank T. Harrington, Complainant,

vs.

Duquesne Gas Corporation, Defendant

Certificate, Annexed to Petition of George W. McCandless

I, J. Wood Clark, Clerk of the United States District Court for the Western District of Pennsylvania do hereby

certify that bond in the sum of $50,000 filed by George W. [fol. 232] McCandless, Receiver, was filed and approved by the Court on the 20th day of January, 1932.

Witness my hand and the seal of this Court this 22nd day of March, 1932.

J. Wood Clark, Clerk. (Seal of the United States District Court, Western District of Pennsylvania)

UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity No. 66-184

FRANK T. HARRINGTON, Complainant,

against

DUQUESNE GAS CORPORATION, Defendant

ORDER APPOINTING GEORGE W. MCCANDLESS ANCILLARY RECEIVER, ANNEXED TO PETITION OF GEORGE W. MCCANDLESS

Upon the annexed bill of complaint filed in the above entitled suit in the United States District Court for the Western District of Pennsylvania, and upon the answer of the defendant therein to said amended bill of complaint, and upon the per curiam decree therein of the United [fol. 233] States District Court for the Western District of Pennsylvania, dated the 19th day of January, 1932, appointing George W. McCandless receiver of the assets, lands, tenements and hereditaments of the defendant Duquesne Gas Corporation, and all of its property real and personal, including choses in action, and upon the certificate of the Clerk of the United States District Court for the Western District of Pennsylvania of the filing and the approving of the bond of said receiver, and upon reading and filing the petition of said George W. McCandless, duly verified the 23 day of March, 1932 from which it appears to the satisfaction of the Court that there is need of an ancillary receivership in this district.

Now, on motion of Ehrich, Royall, Wheeler & Walter, solicitors for the petitioner, it is

Ordered, adjudged and decreed that George W. McCandless be and he hereby is appointed ancillary receiver of

Duquesne Gas Corporation in and for the Southern District of New York to carry into force and effect the order of the Court of original jurisdiction, and it is further

Ordered, adjudged and decreed that said ancillary receiver is hereby authorized to bring an action against the promoters of said corporation, including Maxime H. Furlaud and Carlos Reuter, for an accounting and for the restitution of funds fraudulently diverted and misappropriated and of secret and excessive profits; and to petition for an order to retain solicitors for that purpose; and to do any and all things necessary to be done in connection therewith; and it is further

[fol. 234] Ordered, adjudged and decreed that the defendant, its agents or employees, stockholders, creditors and all marshalls, sheriffs, constables and all other officers, and generally all persons, firms and corporations whatsoever, are hereby enjoined from interfering or attempting to interfere in any manner with said ancillary receiver in effecting such purposes, and it is further

Ordered, adjudged and decreed that before entering upon the performance of any of his duties the said ancillary receiver shall execute and file with the Clerk of this Court a bond with one or more sureties approved by this Court in the penal sum of Twenty-five thousand Dollars ($25,000) conditioned upon the faithful discharge of his duties, and that upon any moneys or funds coming into his hands said ancillary receiver shall immediately report the fact to the Court and submit to the Court the question of an increase of this bond, and it is further

Ordered, adjudged and decreed that any corporate surety duly qualified in accordance with General Rule 28 of this Court shall be sufficient for this purpose, and it is further

Ordered, adjudged and decreed that said ancillary receiver shall make himself amenable to the jurisdiction of this Court and shall authorize his attorneys within this District to accept upon his behalf service of any process of the Federal and State Courts within this District and shall have leave to apply to this Court for further orders and authority and shall comply with all orders of the Court of original jurisdiction.

(Signed) Wm. Bondy, U. S. D. J.

March 23, 1932.

[fol. 235] PLAINTIFF'S EXHIBIT 2

This Agreement made and entered into this 5th day of February 1930, by and between Kingston Corporation, a New Jersey Corporation (hereinafter sometimes called the "Purchaser"), party of the first part, and J. B. Nuss and Anna Nuss, his wife, and C. C. Nuss and Ada C. Nuss, his wife, (hereinafter sometimes called the "Vendor"), party of the second part: Witnesseth:

First: The Vendor represents that he is in a position to cause the leases, leaseholds, gas sale contracts, and equipment listed respectively in Schedules A, B and C attached hereto, to be conveyed to Purchaser, or his nominee, in accordance with the provisions hereof.

Second: Vendor agrees to sell and Purchaser agrees to purchase the property described in paragraph "First" hereof for the sum of Six hundred sixty thousand ($660,000) Dollars cash, subject, however, to the provisions of paragraph "Fifth" hereof.

Third: Vendor agrees to deliver to Purchaser on the day of payment hereinafter provided, valid bargain and sale deeds, bills of sale, and/or assignments conveying, transferring and assigning as good a title to all the property referred to in paragraph "First" hereof and more specifically described in Schedules A, B and C attached hereto, as the owner thereof now has, to Purchaser or his nominee, and as to all operated leaseholds, free from obligations, liens and encumbrances except only current taxes not in de-
[fol. 236] fault, and subject to such limitations as may be set forth in any of the above recited leases and/or the above described gas sales contracts.

Fourth: Purchaser, subject to the terms and provisions of this agreement, hereby agrees to pay for the property, the subject of this agreement, and Vendor agrees to deliver to Purchaser the deeds and/or assignments described in paragraph "Third" hereof at the principal office of Furlaud & Company, Inc., (or at such other place as Purchaser may elect and of which election Purchaser shall give Vendor ten days' notice, either by letter or telegram to Vendor at Washington, Pennsylvania), on the 25th day of March, 1930, or at such date prior thereto as Purchaser

shall elect and of which prior date, if such election shall be made, Purchaser shall give Vendor notice similarly as above specified with respect to any change of place of payment. The time of payment of the purchase price and delivery of said deeds and/or assignments, whether on March 25th, 1930, or on a date prior thereto as in this paragraph provided, is hereby defined to be the date of final payment thereunder.

Fifth: Vendor agrees that Purchaser shall have until March 25th, 1930, to make an examination of the property, papers, books, records, evidences of title and other documents of Vendor and it is further agreed that if such examination should disclose any condition which, in the judgment of the Purchaser, his engineers, auditors, and/or counsel, or if any other condition should exist, which in the judgment of the Purchaser would render it inadvisable to carry out this agreement, then, in such event and upon [fol. 237] notice thereof to Vendor at Washington, Pennsylvania, either by telegram or in writing, on or prior to March 15th, 1930, all liability of the parties hereunder shall terminate. In the event, however, that Purchaser shall notify Vendor at the above mentioned address, by letter or telegram, on or prior to March 15th, 1930, that the examination of the property referred to in paragraph "First" has been satisfactorily completed and that he elects to proceed hereunder, then the time for payment hereunder shall be extended to such date within ten days after the date on which such notice is sent as the Purchaser shall specify in such notice, provided the Vendor shall be given at least five days in which to cause to be prepared, executed and delivered all instruments necessary on his part to carry out this agreement.

Sixth: It is mutually understood and agreed that regardless of the date on which final payment may be made hereunder the properties referred to in paragraph "First" hereof shall be deemed to have been acquired on February 1, 1930, and that in the event the Purchaser or his nominee elects to proceed hereunder and acquire such property he shall receive all of the income accruing to such property from February 1, 1930, to the date of final payment, less such amount as may have actually been expended in connection with the operation of such property, and the Pur-

chaser, if he elects to proceed hereunder, shall pay to the Vendor interest at the rate of six per cent on the total purchase price specified in paragraph "Second" hereof from February 1, 1930, to the date of final payment. At the time of final payment the parties hereto will make such adjustment of the net income as is then possible but in the event [fol. 238] complete reports from the operation of the property referred to in paragraph "First" hereof are not available at the time of final payment, then adjustment shall be made during the ensuing period of sixty days after the date of final payment during which time it is expected that complete data will be available.

Seventh: The Vendor agrees:

(a) That from the date hereof until the time of final payment he will cause the property referred to in paragraph "First" hereof and all wells situated upon the properties included therein to be operated in a prudent manner and with the care usually bestowed by operators of similar properties.

(b) That from and after the date hereof until the date of final payment he will permit no agreement to be entered into for the sale of gas, oil and other by-products produced from the leases described in Schedule "A" and will permit no other contract involving any of the property referred to in paragraph "First" hereof to be entered into which extends beyond the date of final payment without the written consent of the Purchaser.

(c) That the Purchaser may assign this contract to any person, firm and/or corporation which he shall elect and upon such assignment all rights and liabilities of the Purchaser hereunder shall inure to the benefit of and be binding upon such assignee.

(d) That in connection with his causing the transfer of the property referred to in paragraph "First" hereof to the Purchaser and/or his nominee, he will cause all steps to [fol. 239] be disclosed to the Purchaser and his counsel and will submit all documents incident thereto for the approval of such counsel to the Purchaser. Further that he will cause to be executed and delivered any and all documents which counsel to the Purchaser may reasonably request in

order to carry out the conveyance, transfer and assignment of all the property referred to in paragraph "First" hereof.

(e) That he will hold the Purchaser and his assignees harmless from any and all claims of the government of the United States of America and/or of the Commonwealth of Pennsylvania for any taxes which may have accrued prior to January 1, 1930, to either of such governmental bodies or to any political subdivision of the Commonwealth of Pennsylvania and be chargeable against any part of the property referred to in paragraph "First" hereof, and against any and all liability arising out of the proposed transfer of all of the property referred to in paragraph "First" hereof to the Purchaser and/or his assigns.

Witness the following signatures and seals the day and year first above written.

Kingston Corporation, by Otto E. Schuller, Vice President.

Attest: —— ——.
Asst. Secy.

Witness:
H. M. Thompson, J. B. Nuss, (Seal).
Lucy Stewart, Anna Nuss, (Seal).
H. M. Thompson, C. C. Nuss, (Seal).
Lucy Stewart, Ada C. Nuss, (Seal).

Annexed to Plaintiff's Exhibit No. 2 are Schedules A, B and C containing a detailed statement of the leases, lease-[fol. 240] holds, gas sale contracts and equipment to be conveyed to the purchaser or his nominee under the terms of the contract set forth in Plaintiff's Exhibit No. 2.

PLAINTIFF'S EXHIBIT 3

Agreement entered into the 7th day of January, 1930, by and between Daniel Ritter, as Purchaser, and t[illegible] Henderson Oil & Gas Co. as Vendor, providing for a purchase price of $165,000 for certain properties.

Annexed to this agreement appears the following assignment:

"In consideration of the sum of One dollar ($1.00) to me in hand paid and for other good and valuable con-

siderations, receipt of which is hereby acknowledged, I hereby sell, assign, transfer and set over unto Kingston Corporation, a corporation organized and existing under and by virtue of the laws of the State of New Jersey and duly authorized to transact business in the Commonwealth of Pennsylvania, its successors and assigns, all my right, title and interest in and to the attached contract between Daniel Ritter of Wynnewood, Pa., and Henderson Oil & Gas Company of Breckenridge, Pa., dated the 7th day of January, 1930.

Daniel Ritter (L. S.) Kingston Corporation (L. S.)
by Carlos Reuter, V. P.

Witness James F. Sullivan.
Witness R. Halporn."

Plaintiff's Exhibit No. 3 is otherwise similar in form and in content to Plaintiff's Exhibit No. 2.

[fol. 241] PLAINTIFF'S EXHIBIT 4

This exhibit is an agreement dated the 27th day of December, 1929, entered into by and between the defendant Kingston Corporation, as Purchaser, and A. Q. Starr, L. F. Carson and H. T. Wynn, as Vendors, affecting the property known as the Trafford Oil & Gas Co. properties, and providing for a purchase price of $815,000, which agreement was signed by M. H. Furlaud as President of Kingston Corporation.

Plaintiff's Exhibit No. 4 is otherwise similar in form and content to Plaintiff's Exhibit No. 2.

PLAINTIFF'S EXHIBIT 5

This exhibit is an agreement made and entered into on the 6th day of January, 1930, between Daniel Ritter, as Purchaser, and P. L. Wally, as Vendor, covering the Wally property, and providing for a purchase price of $135,000.

Attached to this agreement is an assignment executed by Daniel Ritter to Kingston Corporation, similar to the assignment set forth in Plaintiff's Exhibit No. 3. Said as-

signment was executed by Kingston Corporation, by Carlos Reuter, Vice-President, and R. Halporn, as witness. Otherwise, the agreement in form and content is similar to the agreement set forth in Plaintiff's Exhibit No. 2.

[fol. 242] PLAINTIFF'S EXHIBIT 6

This exhibit consists of two agreements dated February 5, 1930, the first entered into by Kingston Corporation, as Purchaser, and Victor D. Behm and Mary E. Behm, his wife, as Vendors, and the second entered into on the 5th day of February, 1930, by Kingston Corporation as Purchaser, and Victor Behm as Vendor, and providing for an aggregate purchase price of $200,000 for the Behm properties. Said agreement was signed by Otto E. Schuller as Vice-President of Kingston Corporation.

Both of said agreements are in form and in content similar to Plaintiff's Exhibit No. 2, and cover the properties known as the "Behm Properties".

PLAINTIFF'S EXHIBIT 7

This exhibit consists of an agreement entered into on the 2nd day of January, 1930, between Daniel Ritter as Purchaser, and I. T. Campbell, as Vendor, covering the property known as the "Campbell Property", and providing for a purchase price of $135,000.

Attached to this agreement is an assignment by Ritter to Kingston Corporation in form similar to that appearing in Plaintiff's Exhibit No. 3.

The agreement, otherwise, is in form similar to Plaintiff's Exhibit No. 2.

PLAINTIFF'S EXHIBIT 8

This exhibit consists of an agreement dated February 5, 1930, between Kingston Corporation as Purchaser, and C. V. Garrison and Raymond Orrill, as Vendors, covering [fol. 243] the property known as the "Garrison Property", and providing for a purchase price of $120,000. Said

agreement was signed by Otto E. Schuller as Vice-President of Kingston Corporation.

This exhibit is in form similar to Plaintiff's Exhibit No. 2.

PLAINTIFF'S EXHIBIT 9

This consists of an agreement dated the 4th day of January, 1930, between Daniel Ritter, as Purchaser, and A. J. Degenther, as Vendor, covering the property known as the "Byers Property", and providing for a purchase price of $125,000.

Attached to the agreement is an assignment to Kingston Corporation executed by Daniel Ritter. Said assignment was signed by Kingston Corporation, by Carlos Reuter. The said assignment is in form similar to assignment appearing in Plaintiff's Exhibit No. 3.

Otherwise, the agreement is in form similar to that appearing in Plaintiff's Exhibit No. 2.

PLAINTIFF'S EXHIBIT 10

This consists of an agreement dated the 8th day of January, 1930, between Daniel Ritter as Purchaser, and James S. Gallagher, as Vendor, covering the Gallagher Property, and providing for a purchase price of $185,000.

Attached to this agreement is an assignment to Kingston Corporation executed by Daniel Ritter. Said assignment was executed by Kingston Corporation, by Carlos Reuter, Vice-President, and witnessed by R. Halporn. The assignment is in form similar to that appearing in Plaintiff's Exhibit No. 3, and the agreement is otherwise similar in form and in content to that appearing in Plaintiff's Exhibit No. 2.

(Here follows table, side folio 244.)

[fol. 244]

Plaintiff's Exhibit 11

Schedule Showing Purchase Price of Properties Between Owners of Gas Properties and Kingston Corporation

Group	Name of property	Sales agreement Date	Sales agreement Name	Assignment of sales agreement Date	Assignment of sales agreement Name	Purchase price per agreement	To secure extension	Payments Under escrow agreement	Payments Final settlement per working papers of Barrow, Wade Guthrie & Co.	Total
1.	Henderson Oil & Gas Co	1- 7-30	Daniel Ritter	1- 7-30	Kingston Corp.	165,000.00	5,000.00	157,000.00	3,000.00	165,000.00
	James S. Gallagher	1- 8-30	Daniel Ritter	1- 8-30	Kingston Corp.	185,000.00	2,000.00	178,000.00	5,000.00	185,000.00
2.	Trafford Oil and Gas Co		Daniel Ritter		Kingston Corp.	815,000.00	10,000.00	790,000.00	15,000.00	815,000.00
	I. T. Campbell	1-29-30	Daniel Ritter	1-29-30	Kingston Corp.	125,000.00	3,000.00	117,900.00	4,100.00	125,000.00
3.	P. L. Wally	1- 6-30	Daniel Ritter	1- 6-30	Kingston Corp.	135,000.00	1,500.00	125,000.00	8,500.00	135,000.00
	A. J. Degenther	1- 4-30	Daniel Ritter	1- 4-30	Kingston Corp.	125,000.00	1,500.00			
	Byers Property							128,500.00	9,000.00	139,000.00
	A. J. Degenther—1 Well	2- 4-30	Daniel Ritter	2- 4-30	Kingston Corp.	14,000.00				
4.	C. C. Nuss, et al	2- 5-30	Kingston Corp.			660,000.00	13,000.00	647,000.00		660,000.00
	W. G. Wade—Acreage	1-28-30	C. C. Nuss	1-30-30	Kingston Corp.	5,135.00	500.00	4,635.00		5,135.00
5.	Victor D. Behm, et ux	2- 5-30	Kingston Corp.			187,500.00	4,000.00			
	Victor D. Behm							190,000.00	6,000.00	200,000.00
	Victor Gas Company	2- 5-30	Kingston Corp.			62,500.00				
	C. P. Levier & V. D. Behm (5500 Acres approximately)	3-12-30	Duquesne Gas			11,854.00	3,000.00 10.00	8,844.00		11,854.00
	R. C. Tucker Acreage	1-31-30	V. D. Behm	1-31-30	Duquesne Gas	12,000.00		12,000.00		12,000.00
6.	C. V. Garrison, et al	2- 5-30	Kingston Corp.			120,000.00	2,000.00	116,500.00	1,500.00	120,000.00
					Total	$2,572,989.00	$45,510.00	$2,475,379.00	$52,100.00	$2,572,989.00

[fol. 245] PLAINTIFF'S EXHIBIT 12

This consists of an extension agreement executed by C. C. Nuss and J. B. Nuss, Anna Nuss and Ada C. Nuss, and accepted by Kingston Corporation by Otto E. Schuller, Vice President, on the 3rd day of March, 1930, extending the date of the final payment under the contract dated the 5th day of February, 1930, marked Plaintiff's Exhibit No. 2, from March 25, 1930, to April 10, 1930, or prior thereto.

PLAINTIFF'S EXHIBIT 13

This exhibit consists of two documents signed by Victor D. Behm proposing the extension of the date of the final payment from March 25, 1930, to on or prior to April 10, 1930.

These proposals were accepted on the 3rd day of March, 1930, by Kingston Corporation by Otto E. Schuller, Vice President.

PLAINTIFF'S EXHIBIT 14

This exhibit consists of a proposal signed by Raymond Orrill and Charles V. Garrison, proposing to extend the date of the final payment referred to in the contract of February 5, 1930, to April 10, 1930, upon certain terms and conditions.

This proposal was accepted on the 3rd day of March, 1930, by Kingston Corporation, by Otto E. Schuller, Vice-President.

[fol. 246] PLAINTIFF'S EXHIBIT 15

Kingston Corporation,

25 Broad Street, New York, N. Y.

March 12, 1930.

Mr. C. C. Nuss (Ada C. Nuss), Mr. J. B. Nuss (Anna Nuss),
Washington Trust Bldg., Washington, Penna.

DEAR SIRS:

We wish to advise you that the undersigned corporation has made arrangements with Duquesne Gas Corpora-

tion, a corporation organized and existing under the laws of the State of Pennsylvania; by which said corporation will acquire your properties referred to in your Sales Agreement of February 5th, 1930, and we hereby authorize you to deliver to Duquesne Gas Corporation all papers and assignments required.

Very truly yours, Kingston Corporation, by Otto E. Schuller, Vice-President.

CR/CL.

PLAINTIFF'S EXHIBIT 16

This letter, dated March 12, 1930, is addressed by Kingston Corporation by Otto E. Schuller, Vice President, to Mr. C. V. Garrison and Mr. Raymond Orrill, and is similar in form and in content to Plaintiff's Exhibit No. 15.

[fol. 247] PLAINTIFF'S EXHIBIT 17

This consists of a letter dated March 12, 1930, addressed by Kingston Corporation, by Otto E. Schuller, Vice President, to Mr. James S. Gallagher, and is similar in form and in content to Plaintiff's Exhibit No. 15.

PLAINTIFF'S EXHIBIT 18

Kingston Corporation,

52 Wall Street, New York, N. Y.

March 14, 1930.

Mr. C. C. Nuss (Anna Nuss), Mr. J. B. Nuss (Ada Nuss), Washington Trust Building, Washington, Pa.

DEAR SIRS:

In accordance with the agreement between the undersigned Corporation and J. B. Nuss and Anna Nuss and C. C. Nuss and Ada Nuss, dated February 5, 1930, and supplementary agreement, dated March 3, 1930, notice is hereby given you that examination of the property referred

to in Paragraph 1 of the said agreement has been satisfactorily completed and the undersigned elects to proceed in accordance with the said agreement, as supplemented.

Enclosed herewith is our certified check made payable to the order of C. C. Nuss in the amount of Fifteen thousand ($15,000.00) dollars, of which amount, Two thousand [fol. 248] ($2,000.00) dollars is to be paid to C. V. Garrison on or before March 15, 1930.

Please acknowledge receipt of this notice and of the check herewith enclosed.

Very truly yours, Kingston Corporation, by (Signed) Otto E. Schuller, Vice-President.

CR/MHM.
Enc.

PLAINTIFF'S EXHIBIT 19

(Copy)

Washington, Pennsylvania,
March 11, 1930.

To Citizens National Bank, Washington, Pennsylvania.

GENTLEMEN:

There are handed you herewith by the undersigned the following documents:

1. 2 Powers of attorney from H. M. Thompsan et al. to J. B. Nuss and C. C. Nuss, dated February 4th, 1930, and February 1, 1930.

2. Assignment from J. B. Nuss and Anna Nuss and C. C. Nuss and Ada Nuss to Duquesne Gas Corporation, dated March 11, 1930, affecting leasehold estates in Greene and [fol. 249] Washington Counties, Pennsylvania, in duplicate.

3. Assignment from J. B. Nuss, C. C. Nuss, et al., to Duquesne Gas Corporation, dated March 11, 1930, affecting leasehold estates in Greene and Washington Counties, Pennsylvania.

4. Assignment from J. B. Nuss and C. C. Nuss to Duquesne Gas Corporation, dated March 11, 1930, affecting

certain leasehold estates in Greene and Washington Counties, Pennsylvania, in duplicate.

5. Seven assignments of gas sales contracts, each dated March 11, 1930, executed by J. B. Nuss, C. C. Nuss, et al., to Duquesne Gas Corporation, each executed in triplicate.

6. Transfer order on South West Pennsylvania Pipe Lines, dated March 11, 1930, from J. B. Nuss and C. C. Nuss as trustees to Duquesne Gas Corporation, affecting working interest in Elizabeth D. Young oil well, executed in duplicate.

7. Transfer order on South West Pennsylvania Pipe Lines, dated March 11, 1930, from J. B. Nuss and C. C. Nuss as trustees to Duquesne Gas Corporation, affecting working interest in two oil wells on Ella Ray leasehold, executed in duplicate.

to be held and disposed of by you on the following terms and conditions:

1. You are instructed to forward on April 1, 1930, to Equitable Trust Company of New York, a draft in the [fol. 250] amount of six hundred forty-seven thousand dollars ($647,000) drawn on Duquesne Gas Corporation and payable on or before April 10, 1930, with instructions to the said New York bank to notify Furlaud & Company, Inc., 52 Wall Street, New York City, and to permit examination thereof by Furlaud & Company, Inc., and/or by Chapman and Cutler, 57 William Street, New York City, and to advise you at once by telegraph when such draft has been paid.

2. Immediately upon receipt of telegraphic advice from the said New York bank that such draft has been paid, you are instructed to deliver the above enumerated documents handed you herewith to any one of the following named persons, taking his receipt therefor:

(a) Otto E. Schuller, vise president of Duquesne Gas Corporation

(b) Melvin J. Ehrlich, of Chapman and Cutler, Chicago, Illinois

(c) Samuel R. Shambaugh, of Chapman and Cutler, Chicago, Illinois

(d) David Tallant, of Chapman and Cutler, Chicago, Illinois

3. Upon receipt by you of the proceeds of such draft, you are instructed to hold the same subject to the order of the undersigned.

4. It is the intention hereof that in the event the documents above enumerated are delivered by you to the above named persons, or any of them, such delivery shall be deemed to have been made on the date of this letter.

[fol. 251] 5. These instructions may not be revoked or altered except with the written concurrence of Duquesne Gas Corporation, signed by its vice president, or of any one of the above named representatives of Chapman and Cutler, of Chicago.

Yours truly, (Signed) J. B. Nuss, (Signed) C. C. Nuss.

The undersigned acknowledges receipt of the documents above enumerated, and undertakes to hold them subject to the instructions above set forth.

Citizens National Bank, By (Signed) Jno. F. McClay, Cashier.

PLAINTIFF'S EXHIBIT 20

The Equitable Trust Company of New York, 11 Broad Street

Confirmation of message despatched to Citizens National Bank, Washington, Pa.

New York, Apr. 9, 1930.

We hereby confirm the following telegraphic message despatched today.

Your collection 5910 paid we credit your account $647,000.00.

[fol. 252] If this message has not been received by you please notify us immediately.

Very truly yours, J. D. Smith, Authorized Signature.

Capital $500,000.00.
Surplus $1,500,000.00.
John W. Donnan, President, N. R. Baker, Cashier.

Citizens National Bank of Washington

Washington, Pa., April 1, 1930.

Equitable Trust Company
New York, N. Y.

DEAR SIR:

Herewith please find for collection items as stated below. (Protest unless otherwise instructed.)

Jno. F. McClay, Cashier.

No. 5910. From whom received Selves for a/c J. B. Nuss and C. C. Nuss. By whom payable Duquesne Gas Corp. Where payable 52 Wall Street, New York, N. Y. Amount 647,000.00.

Kindly notify Furlaud and Company, Inc., 52 Wall Street, New York City of the arrival of this draft and permit exam- [fol. 253] ination thereof by Furlaud and Company and/or by Chapman and Cutler, 57 William Street, New York City. Advise us by telegraph when the above draft has been paid.

The Equitable Trust Company of New York

City Collection Department,

11 Broad Street, New York

Advice of Credit.

We credit your account proceeds of the collection item described below.

Received 4-2 due 4-10 Dft Yes.

Your number—date 4-1 5910. Description Duquesne Gas Corp. c/o Furlaud & Co. Inc. (wire payt) 52 Wall St. Protest Amount 647,000.00.

Date credited Apr. 9, 1930.

Citizens National Bank

Washington, Pa.

Check or bank draft may have been taken in payment. Credit, therefore, is subject to final payment of such check or draft.

The Equitable Trust Company of New York

Stamp—Paid. We credit your account. The Equitable Trust Company of New York City Collection.

[fol. 254] Foreign Offices London: 10 Moorgate, E. C. 2

Bush House, Aldwych, W. C. 2

Paris: 41 Rue Cambon

Head Office

The Equitable Trust Company of New York

A Merger of

The Seaboard National Bank

The Equitable Trust Company

Member of the Federal Reserve System

11 Broad Street
New York

April 2nd, 1930.

Mr. Jno. F. McClay, Cashier,
Citizens National Bank,
Washington, Pennsylvania.

DEAR SIR:

This will acknowledge receipt of your letter of April 1st, enclosing your collection No. 5910, being a draft drawn on the Duquesne Gas Corporation for $647,000. payable on or before April 10th, 1930.

We communicated with Furlaud & Company and also Messrs. Chapman & Cutler and we understand that this transaction will be taken care of on April 9th.

Just as soon as payment has been received, we shall be glad to advise you by wire.

Very truly yours, (Signed) J. D. Smith, Assistant Secretary.

CH/EW.

[fol. 255] PLAINTIFF'S EXHIBIT 21

$4,000,000

Duquesne Gas Corporation

First Mortgage 6% Convertible Gold Bonds

Dated March 15, 1930. Due March 15, 1945

Distributing Group

Confidential.

New York, March 19, 1930.

Almstead Brothers,
425 West Market Street,
Louisville, Ky.

GENTLEMEN:

We have purchased, when, as and if issued and accepted by us and subject to approval of our counsel $4,000,000 Duquesne Gas Corporation First Mortgage 6% Convertible Gold Bonds, due March 15, 1945, more fully described in the advance circular enclosed herewith.

We are forming a selected group of dealers to distribute this issue and we will act as Distributing Group Managers.

1. Schedule of Prices: The "Offering Price" of these bonds to members of the Distributing Group is 97½% and accrued interest less a net commission of 4% which will be subject to the provisions stated below in case bonds sold to you are repurchased.

You may offer these bonds to the public on March 25, 1930, at the price of 97½% and accrued interest to yield 6.25% to [fol. 256] maturity. From this price, out of your distributing commission of 4% a concession of ¼ of 1% may be allowed by you to banks, dealers, insurance companies, fraternal, educational and charitable organizations and investment trusts. Except as aforesaid, the public offering price must be maintained and no other commission or concessions may be allowed by you to others, whether or not members of this distributing group.

2. Delivery: We expect to make delivery in form of temporary or definitive bonds, or Trustee's interim receipts

therefor on or about April 7, 1930, at the office of Furlaud & Company, Inc., 52 Wall Street, New York, N. Y., against payment in New York funds at 97½% and accrued interest less 1%. The 3% representing the balance of the distributing commission due you will be paid upon termination of the account.

3. Liability: The above sale is made with the understanding that the list price will be maintained until termination of the Distributing Group. We reserve the right to call upon you to take up at our repurchase cost, and you agree to repurchase promptly from us any of the bonds originally delivered to you that are repurchased or contracted for by us at or below 97½% during the life of this Distributing Group, or we may in our discretion retain the concession remaining unpaid to you on Bonds so repurchased.

4. Termination: The life of the Distributing Group will [fol. 257] expire at the close of business on May 26, 1930, unless sooner terminated by us as Managers, but it may be extended in our discretion, for a period or periods not exceeding in the aggregate, sixty days.

5. Reporting Orders: We suggest that you telephone or telegraph your subscription at once to Furlaud & Company, Inc., 52 Wall Street, New York.

6. Circulars and Advertising: A reasonable number of circulars will be furnished on request. You are free to advertise this issue at your own expense after the public advertisement of the undersigned has appeared in New York City.

We reserve the right to make allotments in our discretion and to close the subscription at any time without notice.

Very truly yours, Furlaud & Company, Inc., Bioren & Co., By Furlaud & Company, Inc., Distributing Group Managers.

Furlaud & Company, Inc.,
52 Wall Street, New York, N. Y.

GENTLEMEN:

The undersigned hereby subscribe for $—— principal amount of the above issue of bonds, and agree to be bound

[fol. 258] by all of the terms and provisions as stated hereinabove.

We desire —— circulars with (without) imprint.

.....

Address to which .....
all communications .....
are to be mailed. .....

PLAINTIFF'S EXHIBIT 22

New Issue.

N. Y. Times, March 25, 1930.

$4,000,000

Duquesne Gas Corporation

First Mortgage 6% Convertible Gold Bonds

(Closed Mortgage)

Dated March 15, 1930. Due March 15, 1945.

Principal and semi-annual interest (September 15th and March 15th) payable at the office of the Trustee. Coupon bonds in denominations of $1,000 and $500. Registerable as to principal. Redeemable as a whole or in part on any interest date, upon thirty days' published notice, to and including March 15, 1935, at 105 and accrued interest, the redemption premium decreasing one-half of one per cent during each year thereafter. Interest payable without deduction for that portion of any Federal income tax not in excess of two per cent. Refund of certain California, Con-
[fol. 259] necticut, District of Columbia, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Oregon and Virginia taxes upon timely and proper application, as provided in the mortgage. Tax free in Pennsylvania. Central Hanover Bank and Trust Company, New York, Trustee.

These bonds are convertible on or after November 15, 1930, into shares of the Common Stock of Duquesne Gas Corporation, as constituted at the time of conversion, on

the following basis: 80 shares for each $1,000 bond surrendered for conversion on or after November 15, 1930, and up to and including March 15, 1935; 65 shares for each $1,000 bond surrendered for conversion after March 15, 1935, and up to and including March 15, 1940; 50 shares for each $1,000 bond surrendered for conversion after March 15, 1940, and prior to maturity.

The following is quoted from a letter from the Vice-President of the Corporation to the bankers:

Business: Duquesne Gas Corporation, incorporated under the laws of the State of Pennsylvania, and its subsidiary will own and operate properties which are now producing, transporting, and distributing natural gas in Western Pennsylvania. Over 99% of all gas produced is sold under contract to large industrial enterprises and to leading public utility companies supplying the domestic and industrial requirements of Pittsburgh and vicinity. The properties are located within a radius of from seven to forty-five miles of Pittsburgh. This exceptionally favorable location in one of the country's most highly developed [fol. 260] industrial sections assures a permanent and growing market for the Corporation's output.

The customers of Duquesne Gas Corporation and its subsidiary include The Peoples Natural Gas Company and Columbia Natural Gas Company, subsidiaries of Standard Oil Company of New Jersey; Equitable Gas Company, subsidiary of Philadelphia Company; Manufacturers Light & Heat Company and Greensboro Gas Company, subsidiaries of Columbia Gas & Electric Corporation; State Line Gas Company, subsidiary of West Penn Electric Company; and Westinghouse Electric & Manufacturing Company and its subsidiaries.

The Corporation will own 147 gas wells and will control through lease, or own in fee, gas rights in over 40,000 acres of land in the gas-producing territories of nine adjacent counties encircling the City of Pittsburgh.

Security: These bonds will be secured, in the opinion of counsel, by a first closed mortgage on all of the fixed physical properties and developed leases of the Corporation, now owned and hereafter acquired, subject to outstanding contracts for the sale of gas and the usual farm mortgages. The appraisals of the engineers covering the properties of the Corporation, including working capital of $365,000, ag-

gregate $7,038,000, the properties examined by Mattison, Davey & Winters, New York, being appraised at $4,929,787 and those examined by Ralph E. Davis, Pittsburgh, Pa., at $1,743,520.

Earnings: Consolidated earnings for the properties, have been certified by Barrow, Wade, Guthrie & Co. for the calendar year 1929. For the calendar years 1930, 1931 and [fol. 261] 1932, based upon the successful consummation of the drilling program and the sale of the gas so developed under existing contracts earnings have been computed by the engineers as follows: *

	1929	1930	1931	1932
Gross Revenue	$614,406	$953,353	$1,113,716	$1,203,749
Operating expenses, maintenance and taxes (not Including Federal Income Tax)	80,800	120,321	133,807	148,075
Net earnings available for interest, depreciation, depletion and Federal Income Tax	$533,606	$833,032	$979,909	$1,055,674
Maximum annual interest requirements of this issue		$240,000		

The average of estimated earnings for the three years 1930, 1931 and 1932 indicate net earnings of approximately 4 times such maximum annual interest requirements.

Capitalization: Upon completion of this financing, the Corporation's capitalization will be as follows:

	Authorized	Outstanding
First Mortgage 6% Convertible Gold Bonds (this issue)	$4,000,000	$4,000,000

[fol. 262]

Five Year Convertible 6½% Secured Gold Notes†	1,000,000	1,000,000
Common Stock (no par value)	‡1,250,000 Shares	675,000 Shares

† Secured by pledge with the Trustee of an equal principal amount of General Mortgage 6½% Gold Bonds, due March 15, 1940.

‡ Including 400,000 shares reserved for conversion of the Bonds and Notes.

Sinking Fund: The mortgage will provide for a fixed sinking fund payable monthly to the Trustee, beginning June 10, 1931, and for an additional annual sinking fund

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* Mattison, Davey & Winters and Ralph E. Davis estimate net earnings of the properties examined by them, respectively, as follows: 1930, $543,145 and $289,887; 1931, $666,388 and $313,521; 1932, $743,124 and $312,550. The totals of these amounts represent the estimated net earnings as stated above.

payable out of earnings, as provided in the mortgage, calculated to retire this entire issue prior to maturity.

Gas reserves, valuations, estimated earnings and other engineering features have been reported upon by Mattison, Davey & Winters, New York, for the properties in Fayette, Greene and Washington Counties, Pennsylvania, and Monongalia and Preston Counties, West Virginia, and by Ralph E. Davis, Pittsburgh, Pa., for the properties in Allegheny, Armstrong, Westmoreland and Indiana Counties, Pennsylvania. Accounts have been examined by Barrow, Wade, Guthrie & Co., New York, as of December 31, 1929. Legal matters are under supervision of Chapman & Cutler. These bonds are offered for delivery when, as and if issued and accepted by us, subject to the approval of counsel. Original delivery may be made in the form of Trustee's interim receipts or temporary bonds, exchangeable for definitive bonds.

The Corporation has agreed to make application to list these bonds on the New York Curb Exchange.

[fol. 263] Price 97½ and Accrued Interest to Yield 6.25 Per Cent

Furlaud & Company, Inc.

Bioren & Co., Hincks Bros. & Co., Bradford, Kimball & Co., C. H. Huston & Co., Inc.

The information contained herein, while not guaranteed, has been obtained from sources believed to be reliable.

PLAINTIFF'S EXHIBIT 23

New Issue.

$4,000,000

Duquesne Gas Corporation

First Mortgage 6% Convertible Gold Bonds

(Closed Mortgage)

Dated March 15, 1930. Due March 15, 1945.

Principal and semi-annual interest (September 15th and March 15th) payable at the office of the Trustee. Coupon bonds in denominations of $1,000 and $500. Registerable as to principal. Redeemable as a whole or in part on any interest date, upon thirty days' published notice, to and

including March 15, 1935, at 105 and accrued interest, the redemption premium decreasing one-half of one per cent during each year thereafter. Interest payable without deduction for that portion of any Federal income tax not in excess of two per cent. Refund of certain California, Connecticut, District of Columbia, Iowa, Kansas, Kentucky, [fol. 264] Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Oregon and Virginia taxes upon timely and proper application, as provided in the mortgage.

Tax Free in Pennsylvania

Central Hanover Bank and Trust Company, New York, Trustee

The mortgage will provide for a fixed sinking fund payable monthly to the Trustee beginning June 10, 1931, and for an additional sinking fund payable out of earnings, as provided in the mortgage, calculated to retire this entire issue prior to maturity.

The properties of Duquesne Gas Corporation supply gas at wholesale to prominent public utility and industrial companies in Pennsylvania. The subsidiary operates under the jurisdiction of The Public Service Commission of the State of Pennsylvania.

The following is quoted from a letter from the Vice-President of the Corporation to the bankers:

Business

Duquesne Gas Corporation has been incorporated under the laws of the State of Pennsylvania to acquire, own and [fol. 265] operate natural gas properties in Pennsylvania and West Virginia now supplying gas under contract to The Peoples Natural Gas Company and Columbia Natural Gas Company, subsidiaries of Standard Oil Company of New Jersey; to Equitable Gas Company, subsidiary of Philadelphia Company; to Manufacturers Light & Heat Company and Greensboro Gas Company, subsidiaries of Columbia Gas & Electric Corporation; to State Line Gas Company, subsidiary of West Penn Electric Company; and to Bellewood & Monongahela City Natural Gas Company, Westinghouse Electric & Manufacturing Company, Westinghouse Machine Company, Westinghouse Foundry Company, and Wynn Brick Company.

The properties of the Corporation and its subsidiary are located in the gas producing territories of Armstrong,

Allegheny, Westmoreland, Washington, Greene and Fayette Counties which surround the City of Pittsburgh. The Corporation controls additional gas reserves in Indiana County, Pennsylvania, and in Monongalia and Preston Counties, West Virginia. The Corporation's subsidiary, Victor Gas Company, owns a strategically located pipe line in Fayette County, Pennsylvania.

The Corporation owns 155 gas wells and controls through lease, or owns in fee, the gas rights in over 40,000 acres of land. The properties of the Corporation produced more than 2,600,000,000 cubic feet of gas during the year 1929.

Security

These bonds are secured, in the opinion of counsel, by a first closed mortgage on all of the fixed physical properties [fol. 266] and developed leases of the Corporation, now owned and hereafter acquired, subject to outstanding contracts for the sale of gas and the usual farm mortgages.

The appraisals of the engineers covering the properties of the Corporation, including working capital of $365,000, aggregate $7,038,000, the properties examined by Mattison, Davey & Winters, New York, being appraised at $4,929,787 and those examined by Ralph E. Davis, Pittsburgh, Pa., at $1,743,520.

Earnings

Consolidated earnings of the properties, as certified by Barrow, Wade, Guthrie & Co. for the calendar year 1929, and as estimated by the engineers for the years 1930, 1931 and 1932, are shown below:*

	1929	1930	1931	1932
Gross Revenue	$614,406	$953,353	$1,113,716	$1,203,049
Operating expenses, maintenance and taxes (not including Federal Income Tax)	80,800	120,321	133,807	148,075
Net earnings available for interest, depreciation, depletion and Federal Income Tax	$533,606	$833,032	$979,909	$1,055,674
Maximum annual interest requirements of this issue		$240,000		

*Mattison, Davey & Winters and Ralph E. Davis estimate net earnings of the properties examined by them, respectively, as follows: 1930, $543,145 and $289,887; 1931, $666,388 and $313,521; 1932, $743,124 and $312,550. The totals of these amounts represent the estimated net earnings as stated above.

[fol. 267] The average of estimated earnings for the three years 1930, 1931 and 1932 indicate net earnings of approximately 4 times such maximum annual interest requirements.

Capitalization

	Authorized	Outstanding
First Mortgage 6% Convertible Gold Bonds (this issue)	$4,000,000	$4,000,000
Convertible 6½% Secured Gold Notes*	1,000,000	1,000,000
Common Stock (no par value)	** 1,250,000 Shares	675,000 Shares

* Secured by pledge with the Trustee of an equal principal amount of General Mortgage 6½% Gold Bonds, due March 15, 1940.

** Including 400,000 shares reserved for conversion of the Bonds and Notes.

Gas Reserves

The gas reserves of the acreage controlled by Duquesne Gas Corporation have been reported by the engineers to be over 82,000,000,000 cubic feet, being the aggregate of 63,000,000,000 cubic feet, reported by Mattison, Davey & Winters and 19,000,000,000 cubic feet reported by Ralph E. Davis. The earnings to be derived from these reserves, as estimated by the engineers, are more than sufficient for the complete amortization of the bonds and notes of Duquesne Gas Corporation.

Markets

The properties of Duquesne Gas Corporation are all located within a radius of from seven to forty-five miles of [fol. 268] Pittsburgh. This densely populated and highly industrialized section of the country assures a permanent and rapidly growing market for the Corporation's output. All the gas produced by the Corporation is sold direct to large industrial enterprises and to prominent public utility companies supplying the domestic and industrial requirements of Pittsburgh and vicinity.

Over 99% of all gas produced is sold under contract. Principal customers and locations of supplying properties are listed below:

Name of Purchaser and Location of Supplying Properties:

The Peoples Natural Gas Company, Armstrong, Washington and Westmoreland Counties; Columbia Natural Gas

Company, Washington County (subsidiaries of Standard Oil Company of New Jersey).

Equitable Gas Company, Allegheny, Washington and Westmoreland Counties (subsidiary of Philadelphia Company).

Manufacturers Light & Heat Company, Greene and Washington Counties; Greensboro Gas Company, Washington County (subsidiaries of Columbia Gas & Electric Corporation).

State Line Gas Company, Fayette County (subsidiary of West Penn Electric Company).

[fol. 269] Westinghouse Electric & Manufacturing Company, Allegheny County.

Westinghouse Machine Company, Allegheny County.

Westinghouse Foundry Company, Allegheny County.

Pittsburgh Plate Glass Company, Armstrong and Westmoreland Counties.

Other large customers of the Corporation include Wynn Brick Company and Bellewood & Monogahela City Natural Gas Company.

The Corporation has under consideration an expansion program involving the acquisition of certain new properties which should materially increase the Corporation's gas production and sales.

Conversion

These bonds are convertible on or after November 15, 1930, into shares of the Common Stock of Duquesne Gas Corporation, as constituted at the time of conversion, on the following basis:

80 shares for each $1,000 bond surrendered for conversion on or after November 15, 1930, and up to and including March 15, 1935;

65 shares for each $1,000 bond surrendered for conversion after March 15, 1935, and up to and including March 15, 1940;

50 shares for each $1,000 bond surrendered for conversion after March 15, 1940, and prior to maturity.

Each $500 bond is convertible into a proportionate number of shares of Common Stock. In case of redemption the con- [fol. 270] version privilege pertaining to each bond may be exercised up to and including the redemption date.

Sinking Fund

The mortgage will provide for a fixed sinking fund payable monthly to the Trustee, beginning June 10, 1931, and for an additional annual sinking fund payable out of earnings, as provided in the mortgage, calculated to retire this entire issue prior to maturity. The Corporation may deposit either cash or bonds at par, and the Trustee will use the cash thus deposited for the purchase of bonds at not exceeding the then call price. In the event that bonds cannot be purchased at or at less than the call price, the Trustee will call bonds by lot through publication.

Purpose of Issue

These bonds are issued by the Corporation in connection with the acquisition of properties and to provide cash for developments, extensions and other corporate purposes.

Management

The properties of the Corporation will continue under the management of the men who have been largely responsible for their successful operation in the past. Consultant Managers will be Mattison, Davey & Winters, New York.

Gas reserves, valuations, estimated earnings and other engineering features have been reported upon by Mattison, [fol. 271] Davey & Winters, New York, for the properties in Fayette, Greene and Washington Counties, Pennsylvania, and Monongalia and Preston Counties, West Virginia, and by Ralph E. Davis, Pittsburgh, Pa., for the properties in Allegheny, Armstrong, Westmoreland and Indiana Counties, Pennsylvania. Accounts have been examined by Barrow, Wade, Guthrie & Co., New York, as of December 31, 1929. Legal matters are under the supervision of Chapman & Cutler.

Listed on the New York Curb Exchange

Price at Market

The information contained herein, while not guaranteed, has be-n obtained from sources believed to be reliable.

PLAINTIFF'S EXHIBIT 24

N. Y. Times—April 29, 1930.

New Issue.

$1,000,000

Duquesne Gas Corporation

Convertible 6½% Secured Gold Notes

Dated March 15, 1930. Due March 15, 1935

Principal and semi-annual interest (September 15th and March 15th) payable at the office of the Trustee. Coupon notes in denominations of $1,000 and $500. Registerable as to principal. Redeemable as a whole or in part on any inter- [fol. 272] est date, upon thirty days' published notice, to and including September 15, 1931, at 105 and accrued interest, the redemption premium decreasing one per cent during each year thereafter. Interest payable without deduction for that portion of any Federal income tax not in excess of two per cent. Refund of certain California, Connecticut, District of Columbia, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Oregon and Virginia taxes upon timely and proper application, as provided in the trust agreement. Pacific Trust Company, New York, Trustee.

Tax Free in Pennsylvania

Each $1,000 Note is convertible on or after November 15, 1930 and prior to maturity into 80 shares of the Common Stock of Duquesne Gas Corporation, as constituted at the time of conversion. Each $500 Note is convertible into a proportionate number of shares of Common Stock. In case of redemption the conversion privilege pertaining to each Note may be exercised up to and including the redemption date.

The following is quoted from a letter from the Vice-President of the Corporation to the bankers:

Business: Duquesne Gas Corporation, incorporated under the laws of the State of Pennsylvania, and its subsidiary own and operate properties which are producing, transport-

ing and distributing natural gas in Western Pennsylvania. Over 99% of all gas produced is sold under contract to large industrial enterprises and to leading public utility companies supplying the domestic and industrial requirements of [fol. 273] Pittsburgh and vicinity. The properties are located within a radius of from seven to forty-five miles of Pittsburgh. This exceptionally favorable location in one of the country's most highly developed industrial sections assures a permanent and growing market for the Corporation's output.

The customers of Duquesne Gas Corporation and its subsidiary include The Peoples Natural Gas Company and Columbia Natural Gas Company, subsidiaries of Standard Oil Company of New Jersey; Equitable Gas Company, subsidiary of Philadelphia Company; Manufacturers Light & Heat Company and Greensboro Gas Company, subsidiaries of Columbia Gas & Electric Corporation; State Line Gas Company, subsidiary of West Penn Electric Company; and Westinghouse Electric & Manufacturing Company and its subsidiaries.

The Corporation owns 152 gas wells and controls through lease, or owns in fee, gas rights in over 40,000 acres of land in the gas-producing territories of nine adjacent counties encircling the City of Pittsburgh.

Security: These notes, in the opinion of counsel, will be a direct obligation of Duquesne Gas Corporation and will be secured by pledge with the Trustee of an equal principal amount of General Mortgage 6½% Gold Bonds, due March 15, 1940. The General Mortgage 6½% Gold Bonds, in the opinion of counsel, will be secured by a general mortgage on all of the fixed physical properties and developed leases of the Corporation, now owned and hereafter acquired, subject to $4,000,000 First Mortgage 6% Convertible Gold Bonds, due March 15, 1945, and to outstanding contracts for the sale of gas and the usual farm mortgages. The appraisals of the engineers covering the properties of the Corporation, including working capital of $365,000, aggregate $7,038,000 [the properties examined by Mattison, Davey & Winters, New York, being appraised at $4,929,787 and those examined by Ralph E. Davis, Pittsburgh, Pa., at $1,743,520], which value after deducting the principal amount of First Mortgage Bonds, represents more than $3,000 for each $1,000 principal amount of these Notes. [fol. 274]

Earnings: Consolidated earnings of the properties, as certified by Barrow, Wade, Guthrie & Co. for the calendar year 1929, and as estimated by the engineers for the years 1930, 1931 and 1932, are shown below:*

	1929	1930	1931	1932
Gross Revenue	$614,406	$953,353	$1,113,716	$1,203,749
Operating expenses, maintenance and taxes (not including Federal Income Tax)	80,800	120,321	133,807	148,075
Net earnings available for interest, depreciation, depletion and Federal Income Tax	$533,606	$833,032	$979,909	$1,055,674
Interest and fixed sinking fund requirements of the First Mortgage Bonds	240,000	240,000	289,000	324,000
Balance	$293,606	$593,032	$ 690,909	$731,674
Maximum annual interest requirements of this issue		$65,000		

[fol. 275] Available earnings for 1929, as shown above, were equal to over 4½ times maximum annual interest requirements of this issue, and the average balance for the three years 1930, 1931 and 1932 is estimated to exceed 10 times such interest requirements.

Sinking Fund: The trust agreement under which these notes are issued will provide for a fixed sinking fund payable monthly to the Trustee, beginning June 10, 1930, and for an additional annual sinking fund payable out of earnings as provided in the trust agreement, calculated to retire approximately 50% of this issue prior to maturity.

Gas reserves, valuations, estimated earnings and other engineering features have been reported upon by Mattison, Davey & Winters, New York, for the properties in Fayette, Greene and Washington Counties, Pennsylvania, and Monongalia and Preston Counties, West Virginia, and by Ralph E. Davis, Pittsburgh, Pa., for the properties in Allegheny, Armstrong, Westmoreland and Indiana Counties, Pennsylvania. Accounts have been examined by

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* Mattison, Davey & Winters and Ralph E. Davis estimate net earnings of the properties examined by them respectively, as follows: 1930, $543,145 and $289,887; 1931, $666,388 and $313,521; 1932, $743,124 and $312,550. The totals of these amounts represent the estimated net earnings as stated above.

Barrow, Wade, Guthrie & Co., New York, as of December 31, 1929. Legal matters are under supervision of Chapman & Cutler. These are offered for delivery when, as and if issued and accepted by us, subject to the approval of counsel. Original delivery may be made in the form of Trustee's interim receipts or temporary notes, exchangeable for definitive notes.

Price 98 and Accrued Interest to Yield About 7%

Furlaud & Company, Inc. Cullen & Drew.

[fol. 276] The information contained herein, while not guaranteed, has been obtained from sources believed to be reliable.

PLAINTIFF'S EXHIBIT 25

New Issue Proof—Subject to Change

$1,000,000

Duquesne Gas Corporation

Convertible 6½% Secured Gold Notes

Dated March 15, 1930. Due March 15, 1935

Principal and semi-annual interest (September 15th and March 15th) payable at the office of the Trustee. Coupon notes in denominations of $1,000 and $500. Registerable as to principal. Redeemable as a whole or in part on any interest date, upon thirty days, published notice, to and including September 15, 1931, at 105 and accrued interest, the redemption premium decreasing one per cent during each year thereafter. Interest payable without deduction for that portion of any Federal income tax not in excess of two per cent. Refund of certain California, Connecticut, District of Columbia, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Oregon and Virginia taxes upon timely and proper application, as provided in the trust agreement.

[fol. 277] Tax Free in Pennsylvania

Pacific Trust Company, New York, Trustee

The properties of Duquesne Gas Corporation supply gas at wholesale to prominent public utility and industrial companies in Pennsylvania. The subsidiary operates under the jurisdiction of The Public Service Commission of the State of Pennsylvania.

The following is quoted from a letter from the Vice-President of the Corporation to the bankers:

Business

Duquesne Gas Corporation has been incorporated under the laws of the State of Pennsylvania to acquire, own and operate natural gas properties in Pennsylvania and West Virginia now supplying gas under contract to The Peoples Natural Gas Company and Columbia Natural Gas Company, subsidiaries of Standard Oil Company of New Jersey; to Equitable Gas Company, subsidiary of Philadelphia Company; to Manufacturers Light & Heat Company and Greensboro Gas Company, subsidiaries of Columbia Gas & Electric Corporation; to State Line Gas Company, subsidiary of West Penn Electric Company; and to Bellewood & Monongahela City Natural Gas Company, Westinghouse Electric & Manufacturing Company, Westinghouse Machine Company, Westinghouse Foundry Company, and Wynn Brick Company.

[fol. 278] The properties of the Corporation and its subsidiary are located in the gas producing territories of Armstrong, Allegheny, Westmoreland, Washington, Greene and Fayette Counties which surround the City of Pittsburgh. The Corporation controls additional gas reserves in Indiana County, Pennsylvania, and in Monongalia and Preston Counties, West Virginia. The Corporation's subsidiary, Victor Gas Company, owns a strategically located pipe line in Fayette County, Pennsylvania.

The Corporation will own 147 gas wells and will control through lease, or own in fee, the gas rights in over 40,000 acres of land. The properties of the Corporation produced more than 2,600,000,000 cubic feet of gas during the year 1929.

Security

These notes, in the opinion of counsel, will be a direct obligation of Duquesne Gas Corporation and will be se-

cured by pledge with the Trustee of an equal principal amount of General Mortgage 6½% Gold Bonds, due March 15, 1940. The General Mortgage 6½% Gold Bonds, in the opinion of counsel, will be secured by a general mortgage on all of the fixed physical properties and developed leases of the Corporation, now owned and hereafter aqcuired, subject to $4,000,000 First Mortgage 6% Convertible Gold Bonds, due March 15, 1945, and to outstanding contracts for the sale of gas and the usual farm mortgages.

The appraisals of the engineers covering the properties of the Corporation, including working capital of $365,000, aggregate $7,038,000 [the properties examined by Mattison, Davey & Winters, New York, being appraised at [fol. 279] $4,929,787 and those examined by Ralph E. Davis, Pittsburgh, Pa., at $1,743,520], which value, after deducting the principal amount of First Mortgage Bonds, represents more than $3,000 for each $1,000 principal amount of these Notes.

Earnings

Consolidated earnings of the properties, as certified by Barrow, Wade, Guthrie & Co. for the calendar year 1929, and as estimated by the engineers for the years 1930, 1931 and 1932, are shown below:*

	1929	1930	1931	1932
Gross Revenue	$614,406	$953,353	$1,113,716	$1,203,749
Operating expenses, maintenance and taxes (not including Federal Income Tax)	80,800	120,321	133,807	148,075
Net earnings available for interest, depreciation, depletion and Federal Income Tax	$533,606	$833,032	$979,909	$1,055,674
Interest and fixed sinking fund requirements of the First Mortgage Bonds	240,000	240,000	289,000	324,000
Balance	$293,606	$593,032	$ 690,909	$731,674
Maximum annual interest requirements of this issue		$65,000		

*Mattison, Davey & Winters and Ralph E. Davis estimate net earnings of the properties examined by them respectively, as follows: 1930, $543,145 and $289,887; 1931, $666,388 and $313,521; 1932, $743,124 and $312,550. The totals of these amounts represent the estimated net earnings as stated above.

[fol. 280] Available earnings for 1929, as shown above, were equal to over 4½ times maximum annual interest requirements of this issue, and the average balance available for the three years 1930, 1931 and 1932 is estimated to exceed 10 times such interest requirements.

Capitalization

Upon completion of this financing, the Corporation's capitalization will be as follows:

	Authorized	Outstanding
First Mortgage 6% Convertible Gold Bonds	$4,000,000	$4,000,000
Convertible 6½% Secured Gold Notes (this issue)†	1,000,000	1,000,000
Common Stock (no par value)	‡1,250,000 Shares	675,000 Shares

† Secured by pledge with the Trustee of an equal principal amount of General Mortgage 6½% Gold Bonds, due March 15, 1940.

‡ Including 400,000 shares reserved for conversion of the Bonds and Notes.

Gas Reserves

The gas reserves of the acreage controlled by Duquesne Gas Corporation have been reported by the engineers to be over 82,000,000,000 cubic feet, being the aggregate of 63,000,000,000 cubic feet reported by Mattison, Davey & Winters and 19,000,000,000 cubic feet reported by Ralph E. Davis. The earnings to be derived from these reserves, as estimated by the engineers, are more than sufficient for the complete amortization of the bonds and notes of Duquesne Gas Corporation.

[fol. 281]

Markets

The properties of Duquesne Gas Corporation are all located within a radius of from seven to forty-five miles of Pittsburgh. This densly populated and highly industrialized section of the country assures a permanent and rapidly growing market for the Corporation's output. All the gas produced by the Corporation is sold direct to large industrial enterprises and to prominent public utility companies supplying the domestic and industrial requirements of Pittsburgh and vicinity.

Over 99% of all gas produced is sold under contract. Principal customers and locations of supplying properties are listed below:

Name of purchaser and location of supplying properties:

The Peoples Natural Gas Company, Armstrong, Washington and Westmoreland Counties.
Columbia Natural Gas Company, Washington County. (Subsidiaries of Standard Oil Company of New Jersey.)
Equitable Gas Company, Allegheny, Washington and Westmoreland Counties. (Subsidiary of Philadelphia Company)
Manufacturers Light & Heat Company, Greene and Washington Counties.
Greensboro Gas Company, Washington County. (Subsidiaries of Columbia Gas & Electric Corporation.)
[fol. 282] State Line Gas Company, Fayette County. (Subsidiary of West Penn. Electric Company.)
Westinghouse Electric & Manufacturing Company, Allegheny County.
Westinghouse Machine Company, Allegheny County.
Westinghouse Foundry Company, Allegheny County.
Pittsburgh Plate Glass Company, Armstrong and Westmoreland Counties.

Other large customers of the Corporation include Wynn Brick Company and Bellewood & Monongahela City Natural Gas Company.

The Corporation has under consideration an expansion program involving the acquisition of certain new properties which should materially increase the Corporation's gas production and sales.

Conversion

Each $1,000 note is convertible on or after November 15, 1930, and prior to maturity into 80 shares of the Common Stock of Duquesne Gas Corporation, as constituted at the time of conversion. Each $500 Note is convertible into a proportionate number of shares of Common Stock. In case of redemption the conversion privilege pertaining to each Note may be exercised up to and including the redemption date.

[fol. 283]

Sinking Fund

The trust agreement under which these notes are issued will provide for a fixed sinking fund payable monthly to the

Trustee, begining June 10, 1930, and for an additional annual sinking fund payable out of earnings, as provided in the trust agreement, calculated to retire approximately 50% of this issue prior to maturity. The Corporation may deposit either cash or notes at par, and the Trustee will use the cash thus deposited for the purchase of notes at not exceeding the then call price. In the event that notes cannot be purchased at or at less than the call price, the Trustee will call notes by lot through publication. Upon the retirement of any notes, a like principal amount of General Mortgage Bonds will be cancelled.

Purpose of Issue

These Notes are issued by the Corporation in connection with the acquisition of properties and to provide cash for developments, extensions and other corporate purposes.

Management

The properties of the Corporation will continue under the management of the men who have been largely responsible for their successful operation in the past. Consultant Managers will be Mattison, Davey & Winters, New York.

Gas reserves, valuations, estimated earnings and other [fol. 284] engineering features have been reported upon by Mattison, Davey & Winters, New York, for the properties in Fayette, Greene and Washington Counties, Pennsylvania, and Monongalia and Preston Counties, West Virginia, and by Ralph E. Davis, Pittsburgh, Pa., for the properties in Allegheny, Armstrong, Westmoreland and Indiana Counties, Pennsylvania. Accounts have been examined by Barrow, Wade, Guthrie & Co., New York, as of December 31, 1929. Legal matters are under the supervision of Chapman & Cutler.

These notes are offered for delivery when, as and if issued and accepted by us, subject to the approval of counsel.

Original delivery may be made in the form of Trustee's interim receipts or temporary notes, exchangeable for definitive notes.

Price 98 and Accrued Interest to Yield about 7 Per Cent

The information contained herein, while not guaranteed, has been obtained from sources believed to be reliable.

[fol. 285] PLAINTIFF'S EXHIBIT 26

Duquesne Gas Corporation

First Mortgage 6% Convertible Gold Bonds

Due March 15, 1945

Secondary Distributing Group

Confidential.

New York, August 14, 1930.

DEAR SIRS:

We are forming a Secondary Distributing Group of which we will be the Managers and in which we are pleased to include you, to distribute the First Mortgage 6% Convertible Gold Bonds of Duquesne Gas Corporation. You will have no commitment in this Group except to take up and pay for the number of bonds ordered by you and delivered to you by us. Payment of bonds allotted to you is to be made upon delivery of bonds to you.

This offering is to be made only on and after the above date to bona fide investors by the Distributing Group at the closing price of the said bonds on the New York Curb as of the night before order is received by us unless you are advised by telegraph of any change in price.

Orders will be received for any number of bonds from any member of the Distributing Group, but we reserve the right from time to time to limit the number of bonds to be sold to any one member.

Upon such bonds ordered from us and allotted and delivered to you which are paid for by you and which are not repurchased by us or which we do not contract to repur-[fol. 286] chase during a period of sixty (60) days from date of delivery of such bonds to you, we will pay you:

A commission of 2 points on sales up to 15 bonds;

A commission of 3 points on sales over 15 and up to 25 bonds;

A commission of 3½ points on sales over 25 and up to 50 bonds;

A commission of 4 points on sales over 50 bonds.

We will advance to you one-half of the commission, as per above schedule, by allowing you to deduct one-half of

the commission on each lot of bonds delivered to you when you remit for bonds allotted to you. Settlements on balances of commissions due will be made by us sixty days (60) after each delivery of bonds which are not repurchased, or which we do not contract to repurchase within sixty (60) days from date of delivery to you. Bonds will not be considered sold in calculating commissions due you if they are so repurchased or contracted for.

You agree to return the commissions deducted by or paid to you as aforesaid on any bonds so repurchased or contracted for within 60 days from delivery to you.

Orders should be telegraphed directly to us for confirmation and no order shall be binding on us unless confirmed by us. We reserve the right in our uncontrolled discretion to confirm orders in whole or in part, or to reject orders in whole or in part.

This agreement may be terminated at one day's written or telegraphic notice but such termination shall not affect [fol. 287] the right of the members to commissions on sales of bonds made prior thereto which we do not repurchase or contract to repurchase within sixty days from date of delivery.

If you desire to participate in this distributing group, kindly indicate your acceptance by signing the duplicate attached hereto and returning it to us.

Yours very truly, Furlaud, Reuter & Co., Incorporated, by —— ——, Managers.

Attached thereto is a duplicate with the following at the bottom of the sheet in the lower left hand corner thereof: "Accepted: By —— ——, Date —— —, ——."

PLAINTIFF'S EXHIBIT 27

This exhibit consists of the minute books of Duquesne Gas Corporation, being five volumes in number. Contained in Plaintiff's Exhibit No. 27 are Defendant's Exhibits E, F and G to which reference is hereby made.

[fol. 288] PLAINTIFF'S EXHIBIT 28

No. 1. New York, April 9th, 1930.

Central Hanover Bank and Trust Company

Seventy Broadway 1-33

(perforated)
C H B & T
4 10 30

Pay to the order of Central Hanover Bank and Trust Company $3,015,000.00 Three million fifteen thousand 00/100 Dollars

Robert Halporn, Ass't Treas.

Carlos Reuter, Pres.

[Duquesne Gas Corporation.]

PLAINTIFF'S EXHIBITS 29 AND 30

These exhibits are books of account of Furlaud, Reuter & Co., Inc.

The contents of these books are voluminous and the parts of those books which were referred to in the testimony have been incorporated in the proposed narrative form.

[fol. 289] PLAINTIFF'S EXHIBIT 31

This exhibit is a letter addressed by Chaucer Corporation and Byron Corporation under date of May 29, 1930, to John J. Bergen, 120 Broadway, New York City, and confirmed by him on that date. Said agreement was signed by Chaucer Corporation, by Carlos Reuter, President, and by Byron Corporation, by James P. Cleaver, President.

It grants an option to John J. Bergen to purchase all or any part of 100,000 shares of the Common Stock of Duquesne Gas Corporation at the price of $10.00 per share, a further option to purchase all or any part of 150,000 shares (in addition to the previous 100,000 shares) at $12.50 per share and a further option to purchase 50,000 shares at $14.00 per share.

These options were granted upon certain terms and conditions.

Annexed to said agreement is the following guarantee by Furlaud & Company:

"Furlaud & Company, Inc., being greatly interested in the performance of the foregoing agreement, and being desirous that John J. Bergen shall enter into the foregoing contract does, in order to induce him to enter into and execute the same, hereby guarantee performance of the obligations of the Chaucer Corporation and the Byron Corporation under the terms and provisions of the foregoing contract.

Dated, New York, May 29, 1930.

Furlaud & Company, By M. H. Furlaud (Seal) President."

[fol. 290] DEFENDANT'S EXHIBIT A

Agreement of reorganization between Kingston Corporation, a corporation organized and existing under the laws of the State of New Jersey (hereinafter sometimes called "Kingston") and Duquesne Gas Corporation, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, (hereinafter sometimes called "Duquesne"),

Witnesseth:

Whereas, Kingston has entered into various agreements entitling and obligating it to purchase the properties hereinafter referred to and has arranged to obtain funds necessary to effect its acquisition of such properties, and

Whereas, Duquesne desires to acquire the said properties, and

Whereas, both Kingston and Duquesne have determined that it is to their best interest that the following plan of reorganization be adopted.

Now, therefore, this agreement further witnesseth, That for and in consideration of the premises and of the agreements herein contained, the parties hereto do hereby agree upon and adopt the following plan of reorganization.

1. Kingston will acquire the properties described in Schedule A hereto annexed and made a part hereof, which proper-

ties will constitute all of Kingston's assets other than cash, and will cause said properties to be transferred, assigned and conveyed unto Duquesne, thus transferring to Duquesne substantially all of its assets. Kingston will pay all charges [fol. 291] for fees and expenses of auditors, counsel, engineers and brokers incurred incident to such acquisition.

2. Kingston represents that it is or will be obligated to Central Hanover Bank & Trust Company for the sum of $3,015,000 and in order to effect this reorganization and transfer of assets Duquesne will and does hereby assume and promise to pay promptly such obligation in the amount of $3,015,000 upon its being assured to its satisfaction that the aforesaid properties have been so transferred, assigned and conveyed to it. Also upon such assurance to Duquesne with respect to said properties and in exchange therefor, Duquesne will promptly issue to Kingston 535,000 shares of its Common Stock, without nominal or par value, together with $1,300,000 principal amount of its First Mortgage 6% Convertible Gold Bonds, dated March 15, 1930, and issued under and secured by an indenture between Duquesne and Central Hanover Bank & Trust Company, dated March 15, 1930. Kingston agrees for itself and any subsequent holders of the aforesaid shares of Common Stock of the Corporation that upon any issue for money or other consideration of other shares of stock or any bonds convertible into stock of the Corporation, whether now or hereafter authorized, neither it nor they nor any of them shall be entitled of right by reason of holding stock of the Corporation to subscribe for, purchase or receive any of such stock or bonds so issued but the Board of Directors may dispose of all or any of such stock or bonds without offering the same in the first instance to the stockholders for subscription or purchase.

[fol. 292] 3. Delivery of said shares and bonds by Duquesne shall be conclusive evidence of the acceptance by Duquesne of the aforesaid properties and shall release Kingston from any and all further responsibility with respect thereto, provided, however, that any and all charges which may be made with respect to drilling expenses and/or accrued income up to the date of acquisition of such properties by Duquesne shall be paid by Kingston.

4. Kingston agrees that it will pay or reimburse to Duquesne the amount of any and all fees and taxes for organization and/or qualification of Duquesne.

In witness whereof, the parties hereto have caused these presents to be executed by their proper officers thereunto duly authorized this 7th day of April, 1930.

Kingston Corporation, By M. H. Furlaud, President.

Attest: Robert Halporn, Assistant Secretary.

Duquesne Gas Corporation, By Walter C. Krog, Vice President.

Attest: Robert Halporn, Assistant Secretary.

[fol. 293] Schedule A

All those certain gas properties particularly described in the following mentioned reports:

1. Report of Ralph E. Davis dated January 27, 1930 on James S. Gallagher properties.

2. Report of Ralph E. Davis dated February 1, 1930 on properties of Trafford Oil & Gas Company, of Campbell & Evans and of Equitable Gas Company.

3. Report of Ralph E. Davis dated January 27, 1930 on properties of Henderson Oil & Gas Company.

4. Report of Mattison, Davey & Winters, dated February 18, 1930 on the five groups of properties therein referred to.

DEFENDANTS' EXHIBIT B

This exhibit consists of the original stock certificate book of Duquesne Gas Corporation.

DEFENDANTS' EXHIBIT C

This exhibit consists of the minute book of the defendant, Kingston Corporation. The said corporation was organized under the laws of the State of New Jersey on March 10, 1926.

[fol. 294] DEFENDANTS' EXHIBIT D

This exhibit consists of a certified copy of the certificate of incorporation of Furlaud & Company, Inc.

Paragraph 3 of the said certificate authorizes Furlaud & Company, Inc. • • •

3. To institute, enter into, conduct, assist in, promote, participate in, invest in, carry on and engage in mining, quarrying, irrigating, agricultural, stock raising, real estate, engineering, contracting, manufacturing, industrial, commercial, mercantile, construction and development enterprises, ventures, operations, contracts, works and businesses of every nature, name and description in any part of the world and so far as permitted by law, within the State of New York.

Paragraph 5 of the said certificate authorizes Furlaud & Company, Inc. • • •

5. To promote and assist financially or otherwise, corporations, firms, syndicates, associations, individuals, and others, and to aid all or any of them by loan, subsidy, guaranty or in any other manner whatsoever.

Paragraph 6 of the said certificate authorizes Furlaud & Company, Inc. • • •

6. To act as financial, commercial, or general agent or representative of any corporation, association, firm, syndicate, individual or others, and as such, to develop, improve [fol. 295] and extend the property, trade and business interests thereof and to aid in lawful enterprises in connection therewith, and in connection with acting as such agent or broker for any principal to give any other aid or assistance to such extent as may be permitted to a corporation organized under said Stock Corporation Law; to undertake and carry on any business, undertaking, enterprise, venture, transaction or operation commonly undertaken or carried on by promoters, contractors, merchants, commission men and agents, and in the course thereof, to acquire and dispose of in any manner whatsoever, and to realize upon, all or any interests in stocks, bonds, debentures, notes, certificates of indebtedness, certificates of interest, commercial paper, mortgages, contracts, choses in action, and any and all kinds of real and personal property.

Defendants' Exhibit E

This exhibit consists of the minutes of a meeting of the corporators and stockholders of Duquesne Gas Corporation, held on February 21, 1930, in Philadelphia, Pennsylvania.

Frank A. Cabeen, Jr., T. Lea Perot, Jr. and B. Raisch, being all of the corporators and stockholders of the company, were present. At that meeting Randolph C. Coleman, McLane Tilton and Frank A. Cabeen, Jr., the directors named in the certificate of incorporation of the Duquesne Gas Corporation, were ratified and confirmed as directors [fol. 296] of company to serve until the next annual election of directors.

The following motion was duly made and seconded and unanimously carried.

Resolved, That the directors of this company be and they hereby are authorized, to issue the capital stock of this company to a total of One thousand (1,000) shares without nominal or par value for money, real or personal property, services rendered, or any of such considerations as they may, from time to time, in their discretion, deem advisable.

Defendants' Exhibit F

Minutes of First Meeting of Directors of Duquesne Gas Corporation

This exhibit consists of the minutes of the meetings of the directors of the Duquesne Gas Corporation.

The first meeting of the directors was held on March 5, 1930 and there were present at that meeting Randolph C. Coleman and McLane Tilton, two of the three directors of the corporation.

The following were elected for the officers set beside their respective names:

Randolph C. Coleman, President; Otto E. Schuller, Vice-President; Charles C. Nuss, Vice-President; Victor D. Behm, Vice-President; Walter C. Krog, Vice-President; [fol. 297] Frank A. Cabeen, Jr., Treasurer; Harry J. Steele, Assistant Treasurer; T. W. D. Duke, Secretary; Robert Halporn, Assistant Secretary; Robert Halporn, Assistant Treasurer.

The following resolution was duly made, seconded and unanimously carried:

Resolved, That the subscriptions of Mr. Frank A. Cabeen, Jr. to 400 shares, of Mr. T. Lea Perot, Jr. to 300 shares and of Miss B. Raisch to 300 shares of the common stock, without par value, of the corporation be, and they hereby are, accepted and the transfers of their subscriptions to Furlaud & Company, Inc. be, and they hereby are, approved and that the proper officers of the corporation be, and they hereby are, authorized and directed to issue and deliver a certificate or certificates of common stock of the corporation to Furlaud & Company, Inc. or its nominee or nominees.

Instructions were received from Furlaud & Company, Inc. to issue a certificate for 997 shares to Furlaud & Company, Inc., a certificate for one share to Frank A. Cabeen, Jr., a certificate for one share to T. Lea Perot, Jr., and a certificate for one share to B. Raisch.

The directors authorized the increase of capital stock from 100 shares of common stock without nominal or par value with a stated capital applicable thereto of Five Hundred Dollars ($500) to 1,250,000 shares of common stock without nominal or par value with a stated capital appli- [fol. 298] cable thereto of Six Hundred and Twenty Five Thousand Dollars ($625,000). The directors also authorized the increase of the indebtedness of the company from nothing to Ten Million Dollars ($10,000,000). A meeting of the stockholders was authorized to be convened on April 3, 1930 to take action of approval or disapproval of the proposed increase of the capital stock and of the indebtedness of the corporation.

Minutes of Special Meeting of Directors of Duquesne Gas Corporation Held on April 7, 1930

There were present Randolph C. Coleman and McLane Tilton being two of the three directors of the corporation.

The following offer was received from Furlaud & Company, Inc.

April 3, 1930.

Duquesne Gas Corporation, Philadelphia, Pa.

GENTLEMEN:

We hereby offer to subscribe to 139,000 additional shares of the common stock of your corporation at the price of

$69,500 cash, or 50c. per share, payable upon the issuance and delivery to us or our nominees of valid certificates evidencing full paid and non-assessable shares of said stock.

Your acceptance hereof as indicated below will constitute [fol. 299] a valid contract between us.

Yours very truly, Furlaud & Company, Inc., by M. H. Furlaud, President.

Accepted:

Duquesne Gas Corporation, Robert Halporn, Assistant Treasurer.

A resolution was passed accepting said offer and authorizing the officers to execute the acceptance at the foot thereof.

The chairman thereupon stated that a plan of financing of the corporation had been developed which contemplated the issuance of First Mortgage Bonds, of General Mortgage Bonds, of notes and of common stock of the corporation in connection with the acquisition of properties and to provide cash for development, expansion and other corporate purposes.

Reports of engineers and Certified Public Accountants who had examined the properties and the books and accounts in connection therewith proposed to be acquired by the corporation were presented to the meeting which reports indicated that the value of the properties proposed to be acquired by the corporation was $6,673,307. These reports were scrutinized and examined by all the directors present.

The following resolution was duly made, seconded and unanimously carried.

Resolved, That all of the acts and resolutions of the stock- [fol. 300] holders at a meeting thereof held on April 3, 1930, as recorded in the minutes of the said meeting presented to this meeting be, and the same hereby are ratified, confirmed and approved.

Thereupon the directors unanimously authorized the proper officers of the company in the name and on behalf of the corporation to execute an indenture of mortgage and note agreement in substantially the forms of the drafts before the meeting and the said officers were further authorized to execute and to cause to be authenticated and

delivered on the order of the corporation $4,000,000 of First Mortgage 6% Convertible Gold Bonds of the corporation, $1,000,000 of General Mortgage 6½% Gold Bonds of the corporation and $1,000,000 of Convertible 6½% Secured Gold Notes of the corporation.

The officers were further directed to deposit with the Pacific Trust Company as Trustee under the said note agreement, $1,000,000 of principal amount of General Mortgage 6½% Gold Bonds of the corporation to secure the payment of the $1,000,000 principal amount of Convertible 6½% Secured Gold Notes of the corporation.

The directors thereupon approved the proposed plan of reorganization between Kingston Corporation and Duquesne Gas Corporation, a copy of which plan was attached to the minutes of the meeting and constitutes Defendant's Exhibit A to which reference is hereby made.

There were presented to this meeting the reports of Messrs. Mattison, Davey & Winters and of Ralph E. Davis, engineers, appraising properties proposed to be transferred by Kingston Corporation to Duquesne Gas Corporation pursuant to the aforesaid plan of reorganization . . $6,673,- [fol. 301] 307 together with a report of Barrow Wade Guthrie & Company, Certified Public Accountants, with respect to the earnings of the said corporation.

The directors unanimously adjudged and declared that in their judgment the value of the properties proposed to be transferred to the Duquesne Gas Corporation under the agreement of reorganization between Kingston Corporation and the Duquesne Gas Corporation was $6,673,307.

The officers of the corporation were further directed, upon the receipt from Kingston Corporation of valid deeds to the properties referred to in the reorganization agreement, to issue to Kingston Corporation or its nominees, certificates for 535,000 shares of common capital stock of the corporation and $1,300,000 principal amount of the First Mortgage 6½% Convertible Gold Bonds.

The following resolution was introduced:

"Further resolved, that the sum of $2,358,307 being the figure remaining after the subtraction from the sum of $6,673,307, representing the valuation of the said properties to be transferred to this Corporation, of the sum of $3,015,- 000, representing the said obligation of the Kingston Corporation to be assumed by this Corporation pursuant to the

said plan of reorganization and of the sum of $1,300,000, representing the principal amount of First Mortgage 6% Convertible Gold Bonds of this Corporation to be issued and delivered to the Kingston Corporation, be and it hereby is determined to be the consideration received by this Corporation for the issuance of the said 535,000 shares of its [fol. 302] common stock without par value."

A proposal from Furlaud & Company, Inc., was read before the meeting and unanimously accepted. The proposal is as follows (Defendant's Exhibit H):

"April 7, 1930.

Duquesne Gas Corporation, Philadelphia, Pennsylvania.

GENTLEMEN:

We hereby offer to purchase from you $2,700,000 principal amount of First Mortgage 6% Convertible Gold Bonds of your Corporation to be issued under an indenture of mortgage dated as of March 15, 1930, between your Corporation and Central Hanover Bank and Trust Company, as Trustee, at the price of 90% of the principal amount thereof, plus accrued interest to the date of purchase, and also purchase from you $1,000,000 principal amount of Convertible 6½% Secured Gold Notes of your Corporation to be issued under a note agreement dated as of March 15, 1930, between your Corporation and Pacific Trust Company, as Trustee, at the price of 88% of the principal amount thereof, plus accrued interest to the date of purchase.

Payment for the said bonds and notes shall be made in funds payable through the New York Clearing House against delivery to us or upon our order of the said bonds [fol. 303] and notes at our office, No. 52 Wall Street, New York City, not later than April 9th, 1930.

It is further understood that our obligation to take and pay for the said bonds and notes is conditioned upon the approval by our counsel of the form, terms and validity of the said bonds and notes and the said indenture of mortgage and note agreement and the validity of all legal proceedings in connection with the creation, authorization and execution of each thereof and the sale of said bonds and notes.

Your acceptance hereof, as indicated below, will constitute the foregoing a valid contract between us.

Yours very truly, Furlaud & Company, Inc., by Carlos Reuter, Vice President.

Accepted:

Duquesne Gas Corporation, by Otto E. Schuller, Vice-President."

The proper officers of the company were directed to issue and deliver to Furlaud & Company, Inc., $2,700,000 principal amount of the First Mortgage 6% Convertible Gold Bonds of the Duquesne Gas Corporation, $1,000,000 of the principal amount of the Convertible 6½% Secured Gold Notes of the Duquesne Gas Corporation, in consideration of the payment in cash of the prices for the said bonds and notes stipulated in the said offer.

[fol. 304] Special Meeting of the Board of Directors of Duquesne Gas Corporation

Held on April 7, 1930, at 10:30 A. M.

A special meeting of the Board of Directors of Duquesne Gas Corporation was held on April 7, 1930, at 10:30 A. M. Randolph C. Coleman and McLean Tilton, being two of the three directors of the company, were present.

It was unanimously resolved to increase the number of the Directors of Duquesne Gas Corporation to six.

The resignations of Messrs. Coleman, Tilton and Cabeen were accepted, to take effect on the termination of the meeting. The following were thereupon elected directors of the company:

M. H. Furlaud, Carlos Reuter, Otto E. Schuller, T. W. D. Duke, H. T. Wynn, Chas. C. Henderson.

Mr. Coleman's resignation as President of the Corporation was accepted, and Mr. Carlos Reuter was elected in his stead.

Mr. Frank A. Cabeen, Jr., resigned as Treasurer of the corporation and Mr. Otto E. Schuller was elected in his stead.

[fol. 305] DEFENDANTS' EXHIBIT G

Minutes of Special Meeting of Stockholders of Duquesne Gas Corporation

Held on April 3, 1930, at 4 P. M.

There were present in person: Mr. Frank A. Cabeen, Jr., T. Lea Perot, Jr., Miss B. Raisch, the holders of three shares of the outstanding Common Stock of the Corporation, and there was represneted by proxy Furlaud & Company, Inc., the holder of 997 shares of the outstanding Common Stock of the Corporation.

The stockholders approved the action of the Board of Directors taken on March 5, 1930, and adopted a resolution increasing the authorized capital stock of the Duquesne Gas Corporation from 1000 shares of Common Stock without nominal or par value, with a stated capital applicable thereto of $500, to 1,250,000 shares of Common Stock without nominal or par value with a stated capital applicable thereto of $625,000.

The stockholders approved a resolution adopted by the Board of Directors on March 5, 1930, and themselves adopted a resolution increasing the authorized indebtedness of the Duquesne Gas Corporation from nothing to Ten million dollars ($10,000,000).

The following resolution was duly made, seconded and unanimously adopted:

"Resolved that all of the acts done and proceedings taken [fol. 306] by the Board of Directors and the officers of this corporation from the date of its organization on February 13, 1930, to the present time, be and the same hereby are in all respects approved, confirmed, ratified and adopted as the valid acts of Duquesne Gas Corporation."

The stockholders authorized the Board of Directors to accept the offer of Furlaud & Company, Inc. to subscribe to 139,000 additional shares of the Common Stock of the Corporation at the price of $69,500 cash, or 50 cents per share.

Upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

"Whereas, Duquesne Gas Corporation desires to provide means for the purpose of the acquisition of properties

and for developments, extensions and other corporate purposes; and

"Whereas, the officers of the Corporation have caused to be drafted an indenture of mortgage dated as of March 15, 1930, from the Corporation to Central Hanover Bank and Trust Company, as Trustee, securing $4,000,000 principal amount of First Mortgage 6% Convertible Gold Bonds of the Corporation; and

"Whereas, said indenture of mortgage has been examined by the stockholders of this Corporation now here in meeting assembled and the same found to be suitable and desirable for the accomplishment of the purposes thereof;

[fol. 307] "Now, therefore, be it and it is hereby resolved:

(1) That the Board of Directors of this Corporation be and they hereby are authorized and directed to cause an indenture of mortgage in substantially the form and substance now before this meeting, subject, however, to such changes, additions or amendments as may seem desirable to the proper officers of the Corporation to be signed in the name and on behalf of this Corporation by its President or a Vice President and its corporate seal to be thereunto affixed and attested by its Secretary or an Assistant Secretary and to cause such indenture of mortgage to be delivered to Central Hanover Bank and Trust Company for execution by it as Trustee thereunder;

(2) That the Board of Directors of the Corporation be and they hereby are authorized and directed to cause the corporate officers of the Corporation forthwith upon the execution and delivery of such indenture of mortgage to cause to be executed in the name and on behalf of the Corporation and to be authenticated by Central Hanover Bank and Trust Company, as Trustee, and to be delivered to or upon the order of the President or Vice President of the Corporation, the First Mortgage 6% Convertible Gold Bonds of the Corporation in the aggregate principal amount of $4,000,000 as provided in the said indenture of mortgage;

[fol. 308] (3) That the Board of Directors of the Corporation be and they hereby are authorized and directed to issue and dispose of the said $4,000,000 principal amount of first mortgage bonds secured by the said indenture of

mortgage upon such terms as they in their discretion may deem advisable;

(4) That the Board of Directors be and they hereby are authorized and directed to do all things and to authorize the execution of all contracts, undertakings and agreements necessary or desirable to be done, made or entered into for the purpose of rendering such indenture of mortgage and all bonds proper to be issued thereunder, legal, valid, effective and operative and of making sale of all said bonds proper to be issued under the terms of such indenture of mortgage;

(5) That the form of indenture of mortgage presented at this meeting is in words and figures as follows, to wit:"

A copy of the indenture referred to in the preceding resolutions was annexed to the minutes of the within meeting.

The following portions of the indenture are copied verbatim and are as follows:

At page 5 of the indenture of mortgage securing $4,000,000 principal amount of First Mortgage 6% Convertible Gold Bonds, due March 15, 1945, the following appears:

"No recourse shall be had for the payment of the principal of or the interest upon this bond or of any claim based [fol. 309] hereon or in respect hereof or of said indenture against any past, present or future incorporator, promoter, stockholder, officer or director of the Corporation or of any successor corporation, either directly or through a receiver or trustee in bankruptcy, whether by virtue of any statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability, if any, being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly released, provided that nothing herein shall release any liability arising out of any unlawful abstraction or diminution of the assets of the Corporation."

Further at page 152 of the said indenture of mortgage at Article Thirteen, Section 13.01 thereof, the following paragraph appears:

"The faith and credit of the Corporation are pledged for the payment of the bonds issued hereunder and all interest

thereon, according to the tenor and effect thereof, but each of said bonds is a corporate obligation only, and no recourse whatsoever, either directly or through the Corporation or any trustee, receiver, assignee or any other person, shall be made for the payment of the principal of or interest on any bond, or for the enforcement of any claim based thereon, or otherwise, in respect thereof or of this indenture, or under or upon any obligation, covenant or agreement contained in this indenture, against any promoter, subscriber to the capital stock, incorporator, or any [fol. 310] past, present or future stockholder, officer or director of the Corporation or of any successor or predecessor corporation under any statute or constitution or rule of law or by the enforcement of any assessment, penalty, subscription or otherwise, all such liability of promoters, subscribers, incorporators, stockholders, officers, and directors being waived and released by each successive holder of each bond by the acceptance of such bond and being likewise waived and released by the terms of this indenture provided that nothing herein shall release any liability arising out of any unlawful abstraction or diminution of the assets of the Corporation."

Thereupon the following additional preambles and resolutions were unanimously adopted:

"Whereas, Duquesne Gas Corporation desires to provide additional means for the purpose of the acquisition of properties and to provide cash for developments, extensions and other corporate purposes; and

"Whereas, the officers of the Corporation have caused to be drafted an indenture of general mortgage dated as of March 15, 1930, from Duquesne Gas Corporation to Pacific Trust Company securing $1,000,000 principal amount of General Mortgage 6½% Gold Bonds and have also caused to be drafted an agreement dated as of March 15, 1930, between Duquesne Gas Corporation and Pacific Trust Company, providing for the issuance of $1,000,000 principal [fol. 311] amount of Convertible 6½% Secured Gold Notes to be secured by the pledge with said trustee as collateral of said $1,000,000 principal amount of General Mortgage 6½% Gold Bonds; and

"Whereas, the indenture of general mortgage and said agreement have been examined by the stockholders of the

Corporation now here in meeting assembled and the same found to be suitable and desirable for the accomplishment of the purposes thereof;

"Now, therefore, be it and it is hereby resolved:

(1) That the Board of Directors of the Corporation be and they hereby are authorized and directed to cause an indenture of general mortgage and an agreement, respectively, in substantially the form and substance now before this meeting, subject, however, to such changes, additions or amendments as may seem desirable to the proper officers of the Corporation to be signed in the name of and on behalf of the Corporation by a President or Vice President and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary and to cause such indenture of general mortgage and such agreement to be delivered to Pacific Trust Company for execution respectively by it as trustee under each said indenture of general mortgage and agreement;

(2) That the Board of Directors of the Corporation be and they hereby are authorized and directed to cause the [fol. 312] proper officers of the Corporation forthwith upon the execution and delivery of such indenture of general mortgage to cause to be executed in the name of and on behalf of the Corporation and to be authenticated by Pacific Trust Company, as Trustee, and to be held by said Pacific Trust Company as collateral to secure the said $1,000,000 principal amount of Convertible 6½% Secured Gold Notes, the said General Mortgage 6½% Gold Bonds in the aggregate principal amount of $1,000,000 as provided by said indenture of general mortgage;

(3) That the Board of Directors of the Corporation be and they hereby are authorized and directed to issue and dispose of the said $1,000,000 principal amount of Convertible 6½% Secured Gold Notes issued under the said agreement, upon such terms as they in their discretion may deem advisable;

(4) That the Board of Directors be and they hereby are authorized and directed to do all things and to authorize the execution of all contracts, undertakings or agreements necessary or desirable to be done, made or entered into for the purpose of rendering such indenture of general mort-

gage and such agreement and all bonds and notes proper to be issued respectively thereunder, legal, valid, effective and operative and of making sale of all said notes proper to be issued under the terms of such agreement;

[fol. 313] (5) That the forms of indenture of general mortgage and of agreement presented at this meeting are in words and figures respectively as follows, to wit:"

Annexed to the minutes of the within meeting was a copy of the agreement referred to in the said resolutions between the Duquesne Gas Corporation and the Pacific Trust Company dated as of March 15, 1930, securing $1,000,000 Principal Amount of Convertible 6½% Secured Gold Notes.

In the said agreement was set forth the form of note issued pursuant to the said agreement, which note contained as a part thereof the following paragraph:

"No recourse shall be had for the payment of the principal of or the interest upon this note or of any claim based hereon or in respect hereof or of said agreement against any past, present or future incorporator, promoter, stockholder, officer or director of the Corporation or of any successor corporation, either directly or through a receiver or trustee in bankruptcy, whether by virtue of any statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability, if any, being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly released, provided, that nothing herein shall release any liability arising out of any unlawful abstraction or diminution of the assets of the Corporation."

[fol. 314] Section 11.01 of Article Eleven of the said agreement is as follows:

"The faith and credit of the Corporation are pledged for the payment of the notes issued hereunder and all interest thereon, according to the tenor and effect thereof, but each of said notes is a corporate obligation only, and no recourse whatsoever, either directly or through the Corporation or any trustee, receiver, assignee or any other person, shall be had for the payment of the principal of or interest on any note, or for the enforcement of any claim based thereon, or otherwise, in respect thereof or of this agreement, or under or upon any obligation, covenant or agree-

ment contained in this agreement, against any promoter, subscriber to the capital stock, incorporator, or any past, present or future stockholder, officer or director of the Corporation or of any successor or predecessor corporation under any statute or constitution or rule of law or by the enforcement of any assessment, penalty, subscription, or otherwise, all such liability of promoters, subscribers, incorporators, stockholders, officers and directors, being waived and released by each successive holder of each note by the acceptance of such note and being likewise waived and released by the terms of this agreement provided that nothing herein shall release any liability arising out of any unlawful abstraction or diminution of the assets of the Corporation."

[fol. 315] Minutes of Special Meeting of Stockholders of Duquesne Gas Corporation

Held on April 8, 1930

There was represented by proxy Furlaud & Company, Inc. being the holder of 997 shares of the outstanding Common Stock of the Corporation and there were present in person Mr. Frank A. Cabeen, Jr., Mr. T. Lea Perot, Jr. and Miss B. Raisch, the holders of the remaining three shares of the outstanding stock of the Corporation.

The following resolution was unanimously adopted:

"Resolved, that all of the acts done, resolutions adopted and proceedings taken by the Board of Directors and the officers of this Corporation from the date of its organization on February 13, 1930 to the present time be and the same hereby are in all respects approved, confirmed, ratified, and adopted as the valid acts of Duquesne Gas Corporation."

[fol. 316] DEFENDANT'S EXHIBIT H

April 7, 1930.

Duquesne Gas Corporation, Philadelphia, Pennsylvania.

GENTLEMEN:

We hereby offer to purchase from you $2,700,000 principal amount of First Mortgage 6% Convertible Gold

Bonds of your Corporation to be issued under an indenture of mortgage dated as of March 15, 1930, between your Corporation and Central Hanover Bank and Trust Company, as Trustee, at the price of 90% of the principal amount thereof, plus accrued interest to the date of purchase, and also purchase from you $1,000,000 principal amount of Convertible 6½% Secured Gold Notes of your Corporation to be issued under a note agreement dated as of March 15, 1930, between your Corporation and Pacific Trust Company, as Trustee, at the price of 88% of the principal amount thereof, plus accrued interest to the date of purchase.

Payment for the said bonds and notes shall be made in funds payable through the New York Clearing House against delivery to us or upon our order of the said bonds and notes at our office, No. 52 Wall Street, New York City, not later than April 9th, 1930.

It is further understood that our obligation to take and pay for the said bonds and notes is conditioned upon the approval of our counsel of the form, terms and validity of the said bonds and notes and the said indenture of mortgage and note agreement and the validity of all legal proceedings in connection with the creation, authorization [fol. 317] and execution of each thereof and the sale of said bonds and notes.

Your acceptance hereof, as indicated below, will constitute the foregoing a valid contract between us.

Yours very truly, Furlaud & Company, Inc., by Carlos Reuter, Vice-President.

Accepted:

Duquesne Gas Corporation, by Otto E. Schuller, Vice-President.

[fol. 318] IN UNITED STATES DISTRICT COURT

OPINION BY KNOX, D. J.

This is a suit in equity brought by complainant, as Receiver of Duquesne Gas Corporation, to compel defendants to account

"for all funds or moneys coming into the hands of them or or any of them, or of the agents or representatives of any

of them, or in the hands of anyone else acting with or for them, from the sale of the bonds, notes and shares of stock of said Duquesne Gas Corporation."

The special grievance of the bill is that defendants, or some of them, through the instrumentality of an alleged banking house, known as Furlaud & Co., Inc. came into possession of funds arising from the public offerings of securities of Duquesne Gas Corporation, in the relationship of fiduciaries to that company, and that a large portion of the funds so received, were diverted and misappropriated from the treasury of the gas corporation. The defendants named in the bill may be identified as follows:

Maxime H. Furlaud was the president and principal stockholder of Furlaud & Co., Inc. Carlos Reuter, also an officer and large stockholder in Furlaud & Co. Inc., although named as a defendant herein, was not served with process. He is, therefore, out of the case. Kingston Corporation was a wholly owned subsidiary of Furlaud & Co. Inc. Byron Corporation was owned, in part, by the wife of Maxime H. Furlaud, and in part by the Kipling Corporation, the ownership of which was not revealed. Chaucer Corporation was owned partly by the wife of Carlos Reuter, and partly by Vigil Corporation, whose ownership likewise did not appear.

[fol. 319] The evidence discloses that Furlaud & Co. Inc., a New York Corporation, was engaged in the business of selling issues of corporate securities to the public. The series of events under inquiry had its beginning early in 1930 when Reuter went to Pittsburgh, and negotiated with the owners of nine different gas properties located in Western Pennsylvania, for the purchase of their holdings. He secured gratuitous options thereon, which were taken in the name of Kingston Corporation. Ralph E. Davis, an engineer familiar with the value of the properties, was engaged to make an appraisal of the same. Davis, together with a staff of assistants, entered upon the work. By February 1, 1930, he had rendered reports which indicated that five of the properties, including their working capital, had an aggregate value of around $1,700,000. They were subsequently acquired for about $1,300,000. At the time this appraisal was submitted, Davis had about completed his data relating to the four other tracts, and his preliminary figures, as laid before Reuter, showed their approximate

value to be in the neighborhood of $1,000,000. At about this time, Reuter secured possession of Davis's working papers, and retained a Texas concern, by the name of Mattison, Davey & Winters, to complete the appraisal. A man named Conrad, who seems to have had no experience in the Pennsylvania gas fields, was delegated to do the work. After working single-handed for some ten days, Conrad fixed his valuation of the four remaining properties at about five million dollars. Certain of these gas lands which were later conveyed to Duquesne Gas Corporation for $660,000 by one Nuss, who had been born and raised in the field, and who was in the gas business, were valued by Conrad for approxi- [fol. 320] mately $1,900,000. When Nuss made his conveyance, he included therein certain leases upon undeveloped lands which were regarded as a gift. Conrad gave these undeveloped properties a valuation of $850,000. Other lands, known as the Behm properties, the Tucker acreage, and the Levier tract, which were acquired by the gas corporation for a total sum of $222,697, were valued at $1,300,000. From the recital, it will be observed that properties costing about $900,000, were appraised as being worth about $4,000,000. The total appraisal for all of the gas properties examined by Conrad was about $5,000,000 although their total cost was only around $1,200,000.

The valuations thus fixed having been reached near the middle of February, 1930, the bankers procured extensions of their options upon the lands and made payments to the several optioners, upon account of the purchase prices named in the agreements. The documents were enforcible at the election of the optionees.

About a week thereafter, and on February 21, 1930, Furland & Co. Inc. caused Duquesne Gas Corporation to be organized under the laws of the Commonwealth of Pennsylvania. This concern had an authorized capital of 1,000 shares of no par common stock. The stock was subscribed by nominees of Furland & Co. Inc. at fifty cents per share. The banking house then arranged with the several optionors of the gas properties for the execution of deeds of assignment thereon, and for the delivery of the latter and accompanying muniments of title in escrow, to various banks located in Pittsburgh, and its vicinity.

Duquesne Gas Corporation was named as the assignee in the conveyances thus deposited. Under the terms of the

[fol. 321] option agreements, the balance of the purchase price yet to be paid for the properties was $2,449,900, after taking into consideration various down payments which had previously been made by Kingston Corporation.

The next step in the plan under way was the action of Furlaud & Co. Inc. in bringing about the organization of a so-called "Banker's Syndicate," and a distributing group for the sale and distribution to the public of First Mortgage Six Percent Bonds of Duquesne Gas Corporation, of the par value of four million dollars. The Syndicate was headed by Furlaud & Co., Inc. as managers; and included in its membership, were four other so-called banking houses. All were named in the public announcement of the bond issue which appeared in the New York Times of March 25, 1930. Some forty dealers in corporate securities, scattered over the length and breadth of the land, became members of the distributing group. The bonds were offered at 97½ percent of par, and members of the distributing group were entitled to a commission of four percent of par.

At about the time this step was in progress, Duquesne Gas Corporation, the entire capital stock of which was held by Furlaud & Co. Inc. or its nominees, authorized issue of four million dollars of six percent gold bonds, and the one million dollars of 6½ percent notes, to be secured respectively by first and second mortgages upon its properties. The Company's authorized capital was also increased from 1,000 to 675,000 shares, without par value.

Circulars advertising the bonds now made their appearance. These instruments, as well as the announcement that [fol. 322] appeared in the New York Times, proclaimed that the bonds were secured by a mortgage covering properties which, including working capital of $365,000, had an aggregate appraised value of $7,038,000. It was also stated that the properties examined by Mattison, Davey and Winters, had been appraised at $4,929,787, while those examined by Ralph E. Davis, carried an appraisal of $1,743,52[illegible]

There was testimony at the trial that the circulars, as originally printed, combined the appraised values, and indicated that appraisal as having been jointly made by Davis and by Mattison, Davey and Winters. Upon the objection of Davis, this phraseology was changed so as to eliminate such a misrepresentation.

On April 7, 1930, Duquesne Gas Corporation and Kingston Corporation entered into what was termed an "Agreement of Reorganization". This instrument provided that Kingston Corporation would acquire the optioned gas properties then in escrow, and turn them over to Duquesne Gas Corporation. The latter, on its part, agreed to pay $3,015,000 to Central Hanover Bank & Trust Company, the amount which Kingston Corporation would be under obligation to pay to the Trust Company. The Duquesne Company further agreed to issue 535,000 shares of its stock and $1,300,000 face value of its first mortgage six per cent gold bonds to Kingston Corporation, the bonds to be secured by an indenture, dated March 15, 1930, in which the Trust Company was named as Trustee. On April 9, 1930, the following transactions were had at the offices of Central Hanover Bank & Trust Company:

Maxime H. Furlaud arranged with the bank that for a period of one day the Kingston Corporation should have a credit of $3,015,000, and that Furlaud & Company, Inc. for [fol. 323] for a like period of time, should be entitled to a credit of $3,379,500.

When these credits, which were both closely controlled by the Trust Company, had been set up, Kingston Corporation delivered its certified checks, in the aggregate amount of $2,449,900 to the Equitable Trust Company, Guaranty Trust Company of New York and Central Hanover Bank and Trust Company, respectively. These checks were intended to put the drawees in funds with which to meet drafts which had been drawn against them by the banks in Western Pennsylvania, which held in escrow the several instruments of conveyance by which the gas properties were to be transferred to Duquesne Gas Corporation.

The balance which now remained to the credit of Kingston Corporation upon the books of Central Hanover Bank and Trust Company—the sum of $565,100, was immediately paid back to Furlaud & Company, Inc.—$300,000 for alleged loans advanced and expenses incurred, and $265,100 in the form of a loan. This loan, it may be remarked, incidentally, has never been repaid.

The banking institutions which received the checks of Kingston Corporation having made telephonic and telegraphic reports of the payments of the purchase money drafts to the banks holding the escrowed conveyances, the

latter were straightway delivered and recorded. This information, being received, Duquesne Gas Corporation proceeded to issue to Kingston Corporation the 535,000 shares of stock and $1,300,000 face value of bonds which were called for by the agreement of April 7, 1930. Thereupon, Furlaud & Company, Inc. delivered its check to Duquesne Gas Corporation in the sum of $3,379,500. This was sup- [fol. 324] posed to represent the proceeds which the gas corporation was to receive for $2,700,000 par value of its six per cent bonds, its million dollar issue of gold notes, and 139,000 shares of its capital stock. All of these securities were contemporaneously delivered to Furlaud & Company, Inc. and with the credits which thus came into the treasury of Duquesne Gas Corporation, that Company drew its check for $3,015,000 to Central Hanover Bank and Trust Company in payment of the credit that the bank had advanced to Kingston Corporation. Throughout the proceedings, representatives of the various security dealers who were to distribute the bonds to the public were waiting without the room in which the foregoing transactions were being consummated. They carried checks for the purchase price of the bonds which their firms had respectively undertaken to distribute. These checks totaled about $3,000,000 and they were immediately exchanged for about eighty per centum of the whole bond issue. When this had been accomplished, Furlaud & Company, Inc. out of the money so obtained, and with that which had come from Kingston Corporation, liquidated the credit which it had obtained from the Trust Company.

Within a few weeks from the date of closing, Furlaud & Company, Inc. disposed of the balance of the six per cent bonds which had come into its hands. When it had done so, there had been a total realization from their distribution of $3,631,671.04. But this was not all. It was but a few weeks until Furlaud & Company, Inc. sold the million dollar issue of the Gas Company's 6½ per cent notes to the firm of Cullen & Drew for $861,097.69.

[fol. 325] On June 4, 1930, Kingston Corporation recorded a transfer of bonds of Duquesne Gas Corporation in the face value of $1,300,000 to Furlaud & Company, Inc. by way of a dividend in kind. As a matter of fact, however, the bonds had previously been delivered to Furlaud & Company, Inc., and had been sold.

Finally, Kingston Corporation recorded the sale of 85,000 shares of stock of the gas corporation to the Byron Corporation and to the Chaucer Corporation at fifty cents per share. These concerns sold the same for $850,000.

The foregoing transactions may be summarized as follows:

Furlaud & Company, Inc., received $4,492,768.73 from the sale of the bonds and notes. It paid $2,572,989 to the vendors of the gas properties, and turned over $364,500 to Duquesne Gas Corporation. The latter had that sum plus the physical properties and the $500 it had received for its original issue of 1,000 shares of stock; and was obligated upon all of the securities that had been issued. Byron and Chaucer Corporation were in pocket $850,000 and Furlaud & Company, Inc. still had possession of 590,000 shares of the gas corporation stock, as well as cash in the sum of $1,554,779.73.

Upon the proof before the court, there can be but little doubt that the circulars which Furlaud & Company, Inc. issued in connection with the sale and distribution of the bonds and notes of Duquesne Gas Corporation grossly and fraudulently misrepresented the value of the property by which they were secured. The circulars stated that

[fol. 326] "the appraisals of the engineers covering the properties of the corporation, including working capital of $363,000, aggregate $7,038,000."

The manner in which this excessive appraisal was secured has been related. It was accomplished through the simple expedient of displacing a competent and careful engineer with one who either did not know values, or who was willing to lend himself to the promotion of a bond jobbing operation. When, in addition to this procedure, consideration is given to the incontrovertible fact that the cost of the properties, plus $365,000, amounted only to $2,937,989, it is clearly apparent that the value of the properties as given to the public was wantonly misrepresented. Defendants, it may be remarked, offered no evidence to rebut the conclusion that is compelled by plaintiff's proof.

The circulars further stated that the bonds and notes of the gas company were

"issued by the corporation in connection with the acquisition of properties, and to provide cash for developments, extensions and other corporate purposes."

Defendants argue that this statement was true. In a strictly literal sense there is a modicum of justification for the argument. From the standpoint of fair dealing and honest conduct, the statement was utterly false. No stretch of a straight imagination can reconcile its content with the actualities of the situation. What purchasers of bonds and notes would have believed that out of the sum of $4,492,768.73 which they exchanged for the obligations of the [fol. 327] company more than one and one half million dollars would be appropriated by Furlaud & Company, Inc., and that but a trifle less than three million dollars would be devoted to the corporate purposes of the gas corporation?

That the wrong of a misrepresentation may consist of the quality of its concealment rather than in the nature of its revelation, was made abundantly clear by Lord Halsbury in his opinion in the case of Aaron's Reefs v. Twiss, L. R. (App. Cas. 1896), 273, 285, where he said:

"If by a number of statements you intentionally gave a false impression and induce a person to act upon it, it is not the less false although if one takes each statement by itself there may be a difficulty in showing that any specific statement is untrue."

This statement of Lord Halsbury was quoted with approval by the Court of Appeals of this State in Downey v. Finucane, 205 N. Y. 251, 264. In that litigation, as in this, the promoters of a corporation issued a prospectus for the purpose of inducing sales of the corporation's bonds. The circular contained an ambiguous declaration which was interpreted by the promoters to mean that the corporation was obligated to sell bonds in the amount of five million dollars, but that no one was obligated to purchase them. On the trial the jury found that, taking the prospectus as a whole, its language fairly conveyed the impression that contracts had been made which were mutually binding upon the parties thereto under which the corporation was as-[fol. 328] sured of obtaining five million dollars. The Court of Appeals sustained such finding, and held that a general reader would have been misled by the circular. It seems reasonably clear that in the case at bar the purchasers of the bonds and notes of the gas corporation must have been similarly misled. They were induced to part with their

money upon a representation that their payments were to be devoted to the legitimate purposes of the obligor corporation, but they were not apprised that their funds should serve unjustly to enrich the company's promoters.

Had the transaction been characterized by forthright honesty, there would have been no need for the check kiting and other legerdemain that marked the flotation of Duquesne Gas Corporation's securities. All that would have been required had the gas corporation been an independent entity, and a free agency, was that Furlaud & Company, Inc., should have advanced the purchase money of the gas properties, together with a contribution of $364,500 to the company's working capital. In return for this, the corporation could have issued its securities, and Furlaud & Company, Inc. could have done with them as it chose. In place of open and above board procedure, the Kingston Corporation was injected into the situation. This was done for the reason that Furlaud & Company, Inc. intended as it used one hand to pour $3,379,500 into the treasury of the gas corporation, to siphon $565,100 from the treasury with the other. At the end of the complicated series of transactions occurring at the closing, Kingston Corporation was in precisely the same condition as it was at the beginning. Furlaud & Company, Inc. had all the cash over and above [fol. 329] the purchase price of the gas properties, that had come to Kingston Corporation. Furlaud & Company, Inc. also had all of the bonds and notes, and its nominee, Parisette, had all of the gas corporation's corporate stock.

Having come thus far in an analysis of defendant's machinations, it remains to consider if plaintiff in his capacity as a receiver under a creditor's bill and in a foreclosure suit upon the mortgage securing the bonds, has a standing which will here entitle him to relief against those who defrauded not only the purchasers of the corporate bonds and notes but also, the gas corporation itself.

Little time need be spent in arguing the question as to what, under other circumstances, might be the ability of Duquesne Gas Corporation to seek recoupment for the wrong practised upon it, having in mind that such corporation was itself party to the wrong done upon the purchasers of its stocks and bonds. That corporation was the creature of Furlaud & Company, Inc. It, in turn, was dominated, controlled and motivated by Furlaud and

Reuter. At their behest and procurement, the gas corporation acted as it did. It was they who inflicted upon it the congenital injury that stunted its growth and circumscribed its life. In the belief that the money arising from the sale of the bonds and stock of Duquesne Gas Corporation would be utilized in the development and expansion of its prospects and capacity, the purchasers of such securities were induced to part with their money, a substantial portion of which, instead of reaching Duquesne Gas Corporation, was appropriated by Furlaud & Company, Inc.

In McKee v. Lamon, 159 U. S. 317, the Supreme Court, at page 322, said:

"There can be no doubt of the general proposition that [fol. 330] where money is placed in the hands of one person to be delivered to another, a trust arises in favor of the latter, which he may enforce by bill in equity, if not by action at law."

The intention of the giver of the money rather than that of its receiver is determinative of the purpose to which the fund shall be applied. Nor is it essential that the receiver of the fund shall expressly agree that the money be devoted either to a particular purpose, or to a designated third party. The circumstances under which the payments are made may give rise to the existence of a trust duty upon the part of him who recovers the payment. See Sayer v. Winkoop, 248 N. Y. 54. In that case the defendant, an insurance broker, had obtained a policy of Workmen's Compensation insurance in the State Insurance Fund. The insured corporation made two payments of premiums to the broker. The first of these, but not the second, was remitted to the State Fund. Subsequently, the insured corporation became bankrupt, and the receiver of the concern requested defendant to continue the insurance. Five checks, representing premiums upon the policy were sent to defendant. Instead of transmitting the payments to the State Insurance Fund, the defendant cashed the checks and kept their proceeds. The Court of Appeals held that although the broker had made no express promise to pay over the money to the State Fund, he had received the same as a trustee for such purpose, and that as a result, the State Industrial Commission could hold him therefor, in an action for money had and received.

[fol. 331] Upon the facts here present, it would seem that the receipt by Furlaud & Company, Inc., of the money that it received upon the sale of bonds of Duquesne Gas Corporation, and which, under the circulars, was represented as being intended for the use of such corporation, should give rise to a trust in favor of that corporation which may be asserted by its Receiver. If it be said that Duquesne Gas Corporation was party to the fraud practiced upon the purchasers of its bond, the answer to the charge has already been made. It is that misconduct of the gas corporation is chargeable directly to Furlaud & Company, Inc., which motivated, dominated and controlled all of the activities of its supine and acquiescent agent of fraud and deciet. When the gas corporation, at the instance and behest of its master, permitted the latter to retain the sum of $1,554,779.73, it, in effect, made a gift of such sum to Furlaud & Company, Inc. It had no license or authority, as against its note and bondholders, so to dispose of their money. While the disposition that was made of the money was in no sense a secret to Duquesne Gas Corporation, it was, in reality, a secret profit to Furlaud & Company, Inc. In other words, that corporation concealed pertinent facts from the persons who purchased bonds and notes in reliance upon the circulars in which the securities of Duquesne Gas Corporation were offered for sale. In a sense, the situation is analogous to those in which promoters have been held liable for profits accruing to themselves through the misrepresentation of the true value of property conveyed to a corporation, when reliance upon such misrepresentation has been had by innocent purchasers of the stock of the corporation. See Davis v. Las Ovas Company, 227 U. S. 80; [fol. 332] Walker v. Pike Co. Land Co., 139 Fed. 609; cf. Gates v. Megargel, 266 Fed. 811 (C. C. A. 2nd). It is difficult to see how, if at all, the action of Furlaud & Company, Inc., is a whit less reprehensible than the acts of the promoters in the cases just cited.

In considering the right of the Receiver of Duquesne Gas Corporation to maintain this suit, it must be remembered that the receiver represents not only the corporations, but all those having an interest in its properties as well. See Atlantic Trust Company v. Chapman, 208 U. S. 360, 371; Graselli Chemical Company v. Aetna Explosive Company, 252 Fed. 456 (C. C. A. 2nd). To employ the language of the

court in Westinghouse Electric & Manufacturing Company v. Binghamton Railway Company, 253 Fed. 378, at page 385, it may be said that

"a receivership is for the benefit and protection of all interests, general creditors, secured creditors (bondholders) and stockholders, and it is the duty of the court, so far as reasonably possible, to conserve and protect all inte ts."

It has frequently been held that a receiver can disaffirm fraudulent contracts and conveyances which the corporation could not disaffirm, and also, that the receiver can recover for the wrong that has been wrought upon the creditors. Hamor v. Taylor Rice Engineering Company, 84 Fed. 392; Pittsburgh Carbon Company v. McMillin, 119 N. Y. 46; See Thompson on Corporations, 3rd Ed., Sec. 6436; Smith, Law and Procedure of Receivers, 2nd Ed., Section 357. Although it may be that Duquesne Gas Corporation might not be able, in its own right, to hold Furlaud & [fol. 333] Company, Inc., and its masters to accountability for the fraud that was here worked, simple justice requires that the receiver, in his representative capacity, should be able to vindicate the rights of creditors who were victimized. If a court of equity is to function within the domains of conscience, and if it is to redress the wrongs that occur within that dominion, it must provide a remedy that is capable of checkmating the ingenuity that here perpetrated a grievous wrong.

At this point, it may not be amiss to record the genealogy of Furlaud & Company, Inc. Originally incorporated under that name on July 18, 1928, it became known as Furlaud, Reuter & Company, Inc., on August 1, 1930. Upon October 10, 1931, that name was changed to Winchelsea Holding Corporation. Seventeen days later it was dissolved. Throughout the period of its existence, Maxime H. Furlaud, as has been told, was a director, president and principal stockholder of the concern. Also, as has been related, he was a participant in all that gave rise to this suit, and possessed full knowledge thereof. As the guiding spirit, and conscious participant in the wrongs that were done, he incurred liability to the receiver for the ..ust funds which be diverted from the corporation. Anderson v. Daley, 38 A. D. 505, appeal dismissed, 149 N. Y. 146. In that case, one Daley was a bookkeeper, stockholder, officer and di-

rector of Devlin & Company, a business corporation. As trustee under the Will of Albert Ward he deposited moneys of the Ward Estate with the corporation, which subsequently became insolvent. In the meantime, one Jones, another director of Devlin & Company, died, and the bene- [fol. 334] ficiaries of the Ward Estate brought action to charge the Jones Estate with the balance due to the Ward Estate by the corporation. The Court held that they could recover, saying—

"It (the proof) does, however, clearly establish that Jones was aware of the insolvent condition of the corporation, and he also had knowledge that moneys of the estate were being furnished by the trustee and used in the business of the corporation. He was an active participant in the use of such moneys. * * * the evidence is clearly sufficient to charge him with knowledge and participation in their use for the business of the corporation, and therefore, for his own benefit; and this is sufficient to charge him with liability. * * * *Nor can he shield himself by the fact that in what he did he acted as an officer of the corporation. The corporation could only act through its officers, and it is not essential that the misuse of the trust funds should be for the exclusive benefit of the person making such unlawful use, or indeed any benefit at all. Where he possesses the knowledge of the misuse of the trust funds, and knowingly applies them either for his own benefit or for the benefit of another, his liability is complete, as the injury to the estate is the same whether he do it as an officer or as an individual. The basis of his liability is knowledge and injury, both of which here exist.*" (Italics mine.)

[fol. 335] In Virginia-Carolina Chemical Company v. Ehrich, 230 Fed. 1005, it was held that a suit to charge the officers and directors of a corporation with personal liability for the misappropriation by the corporation of money held by it as trustee, was properly brought in equity, upon the theory that the directors were under a duty to exercise reasonable care to supervise the activities of the corporation. The plaintiff, in fact, failed to prove neglect of duty on the part of the defendants in that case, but the implication was clear that they would have been held liable if such neglect had been proven.

The present suit presents a much stronger case for the imposition of liability upon the defendant Furlaud than either of these two cases. The evidence here shows much more than neglect of duty as a director; it shows active participation by the directing personality of the corporation in the transactions which resulted in a misappropriation of money received in trust. Under the foregoing decision, his personal liability is clear.

The defendant, Kingston Corporation, is under a liability for similar reasons. It took part in every step of the proceedings. It received bonds from Duquesne Gas Corporation and turned them over to Furlaud & Company, Inc., without receiving any consideration therefor. It made a gift to Furlaud & Company, Inc., of the $565,100, which it had received as part of its consideration for transferring the various gas properties to Duquesne Gas Corporation. It thus knowingly acted as a conduit through which Furlaud & Company, Inc., its sole stockholder, was enabled to appropriate to its own use money intended to be paid over to Duquesne Gas Corporation. As an agent of Furlaud & Company, Inc., that participated in the commission of a [fol. 336] breach of trust, it is severally liable to account for the sums diverted. Cf. Iroquois Iron Company v. Kruse, 241 Fed. 433.

The defendants, Byron and Chaucer Corporation, however, are under no liability with respect to the issuance of the bonds and notes since they had no part in any of the transactions through which the trust funds were appropriated.

So far I have dealt only with the profits realized from the sale of the bonds and notes. Plaintiffs also urge that the defendants should be required to account for the profits in the sum of $850,000 which were received by Byron and Chaucer Corporations from the sale of 85,000 shares of the stock of Duquesne Gas Corporation to J. J. Bergen, a dealer in stocks. This stock, although originally issued in the name of Parisette, Furlaud & Company's nominee, was subsequently transferred to Kingston Corporation, which in turn transferred it to Byron and Chaucer Corporations. At the time that the transactions through which Duquesne Gas Corporation acquired the various gas properties were consummated, and for some time thereafter, Furlaud & Company, Inc., owned every share of its capital stock, and

ratified and approved of the whole transaction. However much the persons who subsequently purchased stock from Byron and Chaucer Corporations may have been injured, it does not seem that the receiver can recover on behalf of Duquesne Gas Corporation, under the doctrine announced in the case of Old Dominion Copper Company v. Lewishon, 210 U. S. 206. Nor can he recover, as in the case of the bonds and notes, on the theory that the money paid in by purchasers of stock became impressed with a trust in favor of the corporation. This is so for the reason that the evi- [fol. 337] dence does not show that any representation was made, by circulars or otherwise, that the money so received would be paid over to Duquesne Gas Corporation. The complaint, therefore, will be dismissed as against the defendants, Byron Corporation and Chaucer Corporation.

Plaintiff may have a final decree against the defendants, Maxime H. Furlaud and Kingston Corporation. There is no necessity for the expense and delay of a lengthy accounting proceeding before a Special Master. Upon the evidence before the court, it is clear that the amount of trust money diverted from Duquesne Gas Corporation was $1,554,779.73; the difference between the $4,492,768.73 realized by Furlaud & Company from the sale of the bonds and notes, and the $2,937,989.00 actually devoted to the legitimate corporate purposes of Duquesne Gas Corporation. There is no occasion to determine any offset to this amount by way of expenses incurred, or reasonable compensation to Furlaud & Company for its activities in connection with the sale of the securities. A trustee is not entitled to be reimbursed for any money which he expends in the course of defrauding his beneficiary. Commonwealth Finance Corporation v. McHarg, 282 Fed. 560 (C. C. A. 2nd).

Decree for Plaintiff against the defendants, Maxime H. Furlaud and Kingston Corporation in the sum of $1,554,779.73.

April 14, 1933.

Jno. C. Knox, U. S. D. J.

[fol. 338] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER BY KNOX, D. J.—May 11, 1933

This cause having come on to be heard before the Honorable John C. Knox, one of the Judges of the United States District Court for the Southern District of New York on the 9th day of November, 1932, and this case having been argued by counsel, testimony and proof having been introduced and the Court having handed down its opinion dated the 14th day of April, 1933, it is hereby

Ordered, adjudged and decreed that the opinion heretofore filed on the 14th day of April, 1933, stand as the findings of fact and conclusions of law in this case and be deemed to constitute the formal decision thereof.

Jno. C. Knox, U. S. D. J.

[fol. 339] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

E-66-185

GEORGE W. MCCANDLESS, as Receiver of Duquesne Gas Corporation, Complainant,

vs.

MAXIME H. FURLAUD, CARLOS BEUTER, KINGSTON CORPORATION, BYRON CORPORATION and CHAUCER CORPORATION, Defendants

FINAL DECREE

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, this Court being duly advised in the premises, it is

Ordered, adjudged and decreed, that complainant George W. McCandless, as Receiver of Duquesne Gas Corporation, do have and recover of and from defendants Maxime H. Furlaud and Kingston Corporation, and each of them, the sum of One million, eight hundred thirty four thousand, six hundred forty and 8/100 Dollars ($1,834,640.08), being the

amount (including interest to this date) found by the Court to be owing by said defendants to the complainant on an accounting of the matters referred to in the complaint with interest thereon at the rate of six per cent. (6%) per an-
[fol. 340] num from this date, together with his costs and disbursements herein, for which let execution issue, and it is

Ordered, adjudged and decreed, that the bill of complaint herein be and the same hereby is dismissed as to defendants Byron Corporation and Chaucer Corporation on the merits without costs.

Dated, New York City, May 11, 1933.

Jno. C. Knox, U. S. D. J.

[fol. 341] In United States District Court, Southern District of New York

[Title omitted]

Defendants' Notice of Appeal and Order Allowing Appeal

To the Hon. the Judges of the District Court of the United States for the Southern District of New York:

Please take notice that the above named defendants, Maxime H. Furlaud and Kingston Corporation, feeling aggrieved by the decree in the above entitled action, dated the 11th day of May, 1933 and filed in the office of the Clerk of the United States District Court for the Southern District of New York on the 12th day of May, 1933, and entered as a judgment in the said Clerk's Office on the 15th day of May, 1933, and feeling aggrieved by an order made and filed in the office of the Clerk of the United States District Court for the Southern District of New York on the 23rd day of June, 1932, denying the motion of the defendants
[fol. 342] Maxime H. Furlaud and Kingston Corporation to require the complainant to make a further and better statement of the nature of the claim and/or claims set forth in the amended bill of complaint herein, do hereby appeal from the said decree and/or decrees to the Circuit Court of Appeals for the Second Circuit for the reasons set forth in the assignment of errors filed herewith, and the defend-

ants Maxime H. Furlaud and Kingston Corporation pray that the appeal herein be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which the said decree and/or order were based duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit, sitting at New York, N. Y., under the rules of said Court in such cases made and provided.

Dated, New York, July 19th, 1933.

Eppstein & Hirshfield, Solicitors for Defendants Maxime H. Furlaud and Kingston Corporation, Office & P. O. Address, 521 Fifth Avenue, Borough of Manhattan, City of New York, N. Y.

Appeal allowed this 19th day of July, 1933.

Wm. Bondy, U. S. D. J.

[fol. 343] In United States District Court, Southern District of New York

[Title omitted]

Statement as to Bond

An undertaking dated July 14th, 1933 by the Glens Falls Indemnity Co. in the sum of $250 for the payment of costs was approved by the Hon. William Bondy, one of the Justices of the United States District Court for the Southern District of New York on the 20th day of July, 1933 and filed on that date.

The printing of such bond is dispensed with by consent.

[fol. 344] In United States District Court, Southern District of New York

[Title omitted]

Defendants' Assignments of Error

Now come the appellants, Maxime H. Furlaud and Kingston Corporation, by Eppstein & Hirshfield, their solicitors, and in connection with their petition for appeal say that in

the record, proceedings and in the final decree aforesaid, manifest error has intervened to the prejudice of the appellants, to wit:

1. The Court erred in holding that the complainant above designated was a proper party to bring the within suit.

2. The Court erred in holding that the order dated March 23, 1932, signed by Hon. Wm. Bondy in the action entitled "Frank T. Harrington, Complainant, against Duquesne Gas Corporation, Defendant", instituted in the Southern District of New York, constituted a due or valid appointment of George W. McCandless as ancillary receiver of the [fol. 345] Duquesne Gas Corporation in the Southern District of New York, or that the complainant had otherwise been duly appointed ancillary receiver.

3. The Court erred in holding that the Duquesne Gas Corporation or complainant had any claim or alleged claim or cause of action that could be asserted or enforced against the defendants Maxime H. Furlaud and Kingston Corporation or against Furlaud & Company, Inc.

4. The Court erred in not holding that the complainant represented only the Duquesne Gas Corporation, and could enforce only the claims and/or rights which that corporation had if any, against the defendants.

5. The Court erred in holding that the complainant, as Receiver of Duquesne Gas Corporation, could enforce any claims or rights which purchasers and/or holders of the bonds or notes of the Duquesne Gas Corporation had or may have had against the defendants Furlaud and Kingston Corporation and/or against Furlaud & Company, Inc.

6. The Court erred in holding that the complainant, as Receiver of Duquesne Gas Corporation, could assert any claim against the defendant Furlaud or the defendant Kingston Corporation or against Furlaud & Company, Inc. and could recover from the defendants Maxime H. Furlaud and Kingston Corporation on account of any transaction which the said parties had with Duquesne Gas Corporation or with each other as a result of which they acquired the bonds and/or the notes of the Duquesne Gas Corporation.

[fol. 346] 7. The Court erred in not holding that any alleged claim asserted by the complainant herein could be enforced, if at all, only in a suit, brought by individual bondholders and/or noteholders.

8. The Court erred in not holding that under the terms of the bonds of the Duquesne Gas Corporation and the indenture of mortgage securing the said bonds, no recourse could be had against the defendants herein for the payment of any claim or alleged claim based upon any bond of the Duquesne Gas Corporation.

9. The Court erred in not holding that under the terms of the notes of the Duquesne Gas Corporation and the agreement securing the said notes, no recourse could be had against the defendants herein for the payment of any claim or alleged claim based upon any note of the Duquesne Gas Corporation.

10. The Court erred in receiving any testimony relating to the value of the properties acquired by the Duquesne Gas Corporation or relating to any claimed over-valuation or erroneous appraisals of the said properties. The testimony referred to in this particular assignment of error was elicited from the plaintiff's witnesses Charles C. Nuss, Walter C. Krog, Lyon F. Terry and Cyrus C. Robbins.

11. The Court erred in holding as a matter of law that there was any competent testimony as to any claimed over-valuation of the properties acquired by the Duquesne Gas Corporation or that the appraisals of the said properties were erroneous or fraudulent.

[fol. 347] 12. The Court erred in ruling that the witness Charles C. Nuss was competent to testify as to the value of the oil and gas properties acquired by the Duquesne Gas Corporation.

13. The Court erred in holding that certain leases upon undeveloped lands were transferred by Nuss to the Duquesne Gas Corporation as a gift.

14. The Court erred in finding that $565,100 represented the balance which remained to the credit of the defendant Kingston Corporation upon the books of the Central Hanover Bank & Trust Company after Kingston Corporation

had made payments with respect to the properties transferred to Duquesne Gas Corporation.

15. The Court erred in finding that the loan of $265,100 made by the defendant Kingston Corporation to Furlaud & Company, Inc. has never been repaid.

16. The Court erred in finding that the checks presented at the closing on April 9, 1930, by representatives of the various security dealers who were to distribute the Duquesne Gas Corporation bonds to the public totalled about $3,000,000.

17. The Court erred in failing to find that the checks presented on April 9, 1930, at the closing by various security dealers totalled $1,866,330.

18. The Court erred in finding that the checks presented on April 9, 1930, by the represenatives of the various security dealers at the closing were immediately exchanged for about 80 per cent of the whole bond issue.

[fol. 348] 19. The Court erred in not finding that on the 9th day of April, 1930, only $2,500,000 par value of the bonds of the Duquesne Gas Corporation were taken up by the security dealers.

20. The Court erred in finding that Furlaud & Company, Inc. liquidated the loan which it had obtained from the Central Hanover Bank & Trust Company only by the application of the money obtained from the various security dealers together with the money which had come from Kingston Corporation.

21. The Court erred in failing to find that Furlaud & Company, Inc. liquidated the loan which it had obtained from the Central Hanover Bank & Trust Company by the application (1) of the moneys which it had obtained on that day from the various security dealers who had purchased the Duquesne Gas Corporation bonds from Furlaud & Company, Inc. and (2) of the sum of $1,500,000 which it had borrowed from the Hibernia Trust Company, Chatham & Phenix National Bank & Trust Company, and the Pacific Trust Company.

22. The Court erred in finding that the sum of money realized by Furlaud & Company, Inc. from the distribution

of the Duquesne Gas Corporation 6 per cent Bonds was $3,631,671.04.

23. The Court erred in finding that Furlaud & Company sold $1,000,000 par value of Duquesne Gas Corporation 6½ per cent notes to the firm of Cullen & Drew for $861,097.69.

24. The Court erred in finding that the $1,300,000 face value of Duquesne Gas Corporation Bonds delivered by [fol. 349] Kingston Corporation to Furlaud & Company, Inc. by way of a dividend in kind, declared on June 4, 1930, had previously been delivered to Furlaud & Company, Inc. and had been sold.

25. The Court erred in finding that Furlaud & Company, Inc. received $4,492,768.73 from the sale of the bonds and notes of the Duquesne Gas Corporation.

26. The Court erred in finding that Furlaud & Company, Inc. paid $2,572,989 or any sum whatsoever to the vendors of the gas properties acquired by the Duquesne Gas Corporation.

27. The Court erred in holding that there was any competent evidence or any facts presented which would justify a finding that any alleged misrepresentation was made by Furlaud & Company, Inc. or the defendants or any one in connection with the sale and distribution of the securities of the Duquesne Gas Corporation.

28. The Court erred in holding that the circulars issued in connection with the sale and distribution of the bonds and notes of Duquesne Gas Corporation grossly and fraudulently misrepresented the value of the property by which they were secured.

29. The Court erred in holding that the statement in the circulars that the bonds and notes of the Duquesne Gas Corporation "were issued by the corporation in connection with the acquisition of properties, and to provide cash for developments, extensions, and other corporate purposes" [fol. 350] constituted a misrepresentation and was utterly false.

30. The Court erred in holding that there was any duty on the part of Furlaud & Company, Inc. or of any of the

defendants to inform the purchasers of bonds or notes what portion of the sums paid for the bonds or notes would be devoted to the corporate purposes of the Duquesne Gas Corporation and what portion would be retained by Furlaud & Company, Inc.

31. The Court erred in holding that the defendants or any of them issued a circular covering the sale of the notes of the Duquesne Gas Corporation.

32. The Court erred in holding that any one was induced to purchase a bond or a note of the Duquesne Gas Corporation by any representation or misrepresentation made either by Furlaud & Company, Inc. or by any of the defendants or by any one whatsoever.

33. The Court erred in holding that there was any duty upon the defendants and/or Furlaud & Company, Inc. to devote any monies received by them from the sale of the bonds or notes of the Duquesne Gas Corporation for the benefit or to the purposes of the said corporation.

34. The Court erred in holding that any representation or misrepresentation made by Furlaud & Company, Inc. to purchasers of the bonds and notes of the Duquesne Gas Corporation created any right or interest in the said corporation in the proceeds derived from the sale of the said securities.

[fol. 351] 35. The Court erred in holding that any funds or property which the Duquesne Gas Corporation was entitled to receive or in which it had any interest were diverted from it by Furlaud & Company, Inc. or by any of these defendants.

36. The Court erred in finding that the defendant Kingston Corporation was used for fraudulent purposes in connection with the acquisition of the properties of the Duquesne Gas Corporation and the sale of its securities.

37. The Court erred in holding that the Duquesne Gas Corporation was party to any alleged wrong committed upon the purchasers of its securities.

38. The Court erred in holding that there were any circumstances surrounding the payments made to Furlaud & Company, Inc. by the purchasers of the securities of the Duquesne Gas Corporation, which gave rise to a trust duty

on the part of Furlaud & Company, Inc. or the defendants or both toward the said purchasers or toward the Duquesne Gas Corporation.

39. The Court erred in finding that the Duquesne Gas Corporation permitted Furlaud & Company, Inc. to unlawfully retain the sum of $1,554,779.73 or any sum whatsoever or that Furlaud & Company, Inc. received a secret profit to that extent.

40. The Court erred in holding as a matter of law that the situation in the case at bar is analogous to those situations in which promoters have been held liable for profits [fol. 352] accruing to themselves through the misrepresentation of the true value of property conveyed to a corporation, when reliance upon such misrepresentation has been had by innocent purchasers of the stock of the corporation.

41. The Court erred in finding that the defendant Maxime H. Furlaud was the guiding spirit and conscious participant in the wrongs that are claimed to have been done in connection with the acquisition of the properties of the Duquesne Gas Corporation and the sale and distribution of its securities and possessed full knowledge thereof.

42. The Court erred in holding as a matter of law that the defendant Maxime H. Furlaud incurred liability to the Receiver of the Duquesne Gas Corporation for alleged trust funds claimed to have been diverted from the Duquesne Gas Corporation.

43. The Court erred in holding as a matter of law that the defendant Maxime H. Furlaud was personally responsible for any misappropriations of the funds of the Duquesne Gas Corporation claimed to have been made by Furlaud & Company, Inc.

44. The Court erred as a matter of law in holding that the defendant Kingston Corporation was liable for the claimed misappropriations.

45. The Court erred in finding that the defendant Kingston Corporation delivered bonds of the Duquesne Gas Corporation to Furlaud & Company, Inc. without receiving any consideration therefor.

[fol. 353] 46. The Court erred in finding that the defendant Kingston Corporation made a gift to Furlaud & Company, Inc. of $565,100, or of any sum whatsoever.

47. The Court erred in holding that the defendant Kingston Corporation acted as a conduit or agent through which Furlaud & Company, Inc. was enabled to appropriate to its own use money intended to be paid over to Duquesne Gas Corporation.

48. The Court erred in holding as a matter of law that the defendant Kingston Corporation and the defendant Maxime H. Furlaud were liable to account to the complainant for any sums claimed to have been diverted from the Duquesne Gas Corporation.

49. The Court erred in decreeing that the complainant recover of the defendants Maxime H. Furlaud and Kingston Corporation the sum of $1,834,640.08 or any amount whatsoever.

50. The Court erred in holding that there was no necessity for an accounting and in failing and in refusing to submit the matter to a master to take an account.

51. The Court erred in permitting complainant's witness, Roger A. McShea, Jr., to testify concerning the results of his examination of the books of Furlaud & Company Inc.

52. The Court erred in denying defendants' motion to strike out the testimony of the complainant's witness Roger A. McShea, Jr.

[fol. 354] 53. The Court erred in holding that the alleged trustees, the defendants herein, are not entitled to have offset against the amount awarded to the complainant, all monies expended and expenses incurred by Furlaud & Company, Inc. in connection with its activities in the acquisition of the properties owned by the Duquesne Gas Corporation and in the sale of the bonds and notes of the Duquesne Gas Corporation together with reasonable compensation for the services it rendered in connection therewith.

54. The Court erred in denying the motion made on behalf of the defendants Maxime H. Furlaud and Kingston Corporation to dismiss the amended complaint at the close of the entire case.

55. The Court erred in not dismissing the Plaintiff's Bill for want of equity.

56. The Court erred in entertaining the within suit in equity in violation of Section 267 of the Judicial Code (28 U. S. C. A. Sec. 384).

57. The Court erred in retaining the within suit in equity in violation of Rule 22 of the Equity Rules and in violation of the defendants' right to trial by jury preserved under the Seventh Amendment to the United States Constitution.

58. The United States District Court for the Southern District of New York erred in denying, by an order dated June 23, 1932, the applications made by the defendants herein by orders to show cause dated May 19, 1932, to require the complainant to make a further and better statement of [fol. 355] the nature of the claim and/or claims set forth in the amended bill of complaint herein.

59. The Court erred in receiving any testimony with regard to the appraisals and valuation of the properties acquired by the Duquesne Gas Corporation as binding on the defendant Maxime H. Furlaud.

60. The Court erred in receiving any testimony herein with regard to the issuance of the circulars and the representations contained therein as binding upon the defendant Maxime H. Furlaud.

61. The Court erred in admitting the following exhibits in evidence as binding on the defendant Maxime H. Furlaud—Plaintiff's Exhibit 2 to 31 inclusive.

62. The Court erred in not holding that there was a fatal variance between the allegations of the amended bill of complaint and the proof herein and in not dismissing the amended bill therefor.

63. The decree is against the weight of the evidence.

64. The decree is contrary to law.

65. There are other plain errors of the Court apparent on the face of the record not hereinbefore specifically assigned.

Wherefore the appellants pray that the decree of the District Court of the United States for the Southern Dis-

[fol. 356] trict of New York, dated the 11th day of May, 1933, may be reversed and the amended complaint herein be dismissed.

Dated, New York, July 19th, 1933.

Eppstein & Hirshfield, Solicitors for Defendants-Appellants Maxime H. Furlaud and Kingston Corporation.

To: Charles Weiser, Esq., Clerk of the United States District Court.

Ehrich, Royall, Wheeler & Walter, Esqs., Solicitors for Complainant, 20 Exchange Place, New York, N. Y.

[fol. 357] Citation in usual form omitted in printing.

[fol. 358] In United States District Court, Southern District of New York

[Title omitted]

Complainant's Petition on Appeal and Order Allowing Appeal

The complainant, George W. McCandless, as receiver of Duquesne Gas Corporation, feeling himself aggrieved by that part of the decree in the above entitled suit, dated May 11, 1933, filed in the office of the Clerk of the United States District Court for the Southern District of New York on May 12, 1933 and entered as a judgment in said Clerk's office on May 15, 1933, which dismisses the bill of complaint as to defendants Byron Corporation and Chaucer Corporation on the merits and fails to give judgment against said defendants Byron Corporation and Chaucer Corporation as well as against defendants Maxime H. Furlaud and Kingston Corporation for $850,000 received from the sale of Duquesne Gas Corporation stock with interest thereon, does hereby appeal from all that part of said decree to the Circuit Court of Appeals for the Second Circuit for the reasons set forth [fol. 359] in the assignment of errors filed herewith and he prays that this appeal may be allowed, that a citation be issued directed to the above named defendants Byron Cor-

poration, Chaucer Corporation, Maxime H. Furlaud and Kingston Corporation, as provided by law and that a transcript of the record, proceedings and papers upon which said decree was made be duly authenticated and sent to the United States Circuit Court of Appeals for the Second Circuit sitting at New York, N. Y., under the rules of said Court.

Dated, New York City, August 9, 1933.

Ehrich, Royall, Wheeler & Walter, Solicitors for Complainant, Office and P. O. Address, No. 20 Exchange Place, Borough of Manhattan, City of New York.

Appeal allowed this 10th day of August, 1933.

Robert P. Patterson, U. S. D. J.

[fol. 360] In United States District Court, Southern District of New York

[Title omitted]

Statement as to Bond

An undertaking dated July 31, 1933, by the American Surety Co. in the sum of $250. for the payment of costs was approved by the Hon. Robert P. Patterson, one of the Justices of the United States District Court for the Southern District of New York on the 10th day of August, 1933 and filed on that date. The printing of said bond is dispensed with on consent.

[fol. 361] In United States District Court, Southern District of New York

[Title omitted]

Complainant's Assignment of Errors

Now comes the appellant, George W. McCandless as receiver of Duquesne Gas Corporation, by Ehrich, Royall, Wheeler & Walter, his solicitors, and in connection with his appeal assigns the following errors in the findings of fact and conclusions of law and in the final decree of this Court, dated May 11, 1933, entered in the office of the Clerk of the

United States District Court for the Southern District of New York on May 12, 1933, and docketed as a judgment in said Clerk's office on May 15, 1933:

First: The Court erred in holding that complainant, as receiver of Duquesne Gas Corporation, had no claim which could be asserted against defendants Furlaud, Reuter, Byron Corporation and Chaucer Corporation arising from the sale of 85,000 shares of the capital stock of Duquesne Gas Corporation for the sum of $850,000.

[fol. 362] Second: The Court erred in not giving judgment to Complainant for $425,000 against defendant Byron Corporation and $425,000 against defendant Chaucer Corporation with interest thereon.

Third: The Court erred in not finding that defendants Maxime H. Furlaud and Kingston Corporation were responsible for the acts of defendants Byron Corporation and Chaucer Corporation in acquiring said shares without consideration being paid therefor to Duquesne Gas Corporation.

Fourth: The Court erred in not finding that defendants Maxime H. Furlaud and Kingston Corporation were accountable to complainant for the $850,000 received by defendants Byron Corporation and Chaucer Corporation from the sale of said shares.

Fifth: The Court erred in not giving judgment to complainant against defendants Maxime H. Furlaud and Kingston Corporation for the $850,000 received by defendants Byron Corporation and Chaucer Corporation from the sale of stock of Duquesne Gas Corporation with interest upon said sum of $850,000, in addition to the amount of $1,834,640.08 awarded in the judgment granted.

Wherefore, the appellant prays that so much of the decree of the United States District Court for the Southern District of New York, dated May 11, 1933, as dismisses the bill of complaint as to the defendants Byron Corporation and Chaucer Corporation and fails to give complainant judgment against defendants Maxime H. Furlaud and Kingston Corporation for the $850,000 received from the sale [fol. 363] of stock, in addition to the amount of $1,834,640.08 awarded in the judgment granted, may be modified and

judgment given against defendants Byron Corporation and Chaucer Corporation for $425,000 each and against Maxime H. Furlaud and Kingston Corporation for an additional $850,000 each, with interest.

Dated New York City, August 9, 1933.

Ehrich, Royall, Wheeler & Walter, Solicitors for Complainant-Appellant. Office & P. O. address: No. 20 Exchange Place, Borough of Manhattan, City of New York.

To Charles Weiser, Esq., Clerk of the United States District Court.

Eppstein & Hirshfield, Esqs., Solicitors for Defendants Maxime H. Furlaud, Kingston Corporation, Byron Corporation and Chaucer Corporation, 521 Fifth Avenue, New York City.

[fols. 364 & 365] Citation directed to Byron Corporation, Chaucer Corporation, Maxime H. Furlaud and Kingston Corporation omitted in printing.

[fol. 366] In United States District Court, Southern District of New York

[Title omitted]

Order Extending Term Until October 6, 1933 (Kingston Corporation and Maxime H. Furlaud)

Upon the annexed stipulation, it is, now on motion of Eppstein & Hirshfield, solicitors for the defendants-appellants-appellees, Maxime H. Furlaud and Kingston Corporation,

Ordered that the time for the defendants-appellants-appellees, Maxime H. Furlaud and Kingston Corporation to serve and file the record on appeal in the above matter in the office of the Clerk of the United States Circuit Court of Appeals for the Second Circuit, be and the same hereby is extended up to and including the 6th day of October, 1933.

Dated New York, September 25, 1933.

Charles Weiser, Clerk of the United States District Court, Southern District of New York.

[fol. 367] In United States District Court

[Title omitted]

Stipulation Annexed to Order

It is hereby stipulated and agreed by and between the solicitors for the respective parties hereto that the time for the defendants-appellants, Maxime H. Furlaud and Kingston Corporation to serve and file the record on appeal in the office of the Clerk of the United States Circuit Court of Appeals for the Second Circuit, be and the same hereby is extended up to and including the 6th day of October, 1933.

Dated New York, September 20, 1933.

Eppstein & Hirshfield, Solicitors for Defendants-Appellants, Kingston Corporation and Maxime H. Furlaud. Ehrich, Royall, Wheeler & Walter, Solicitors for Complainant-Appellee.

[fol. 368] In United States District Court, Southern District of New York

[Title omitted]

Order Extending Term Until October 6, 1933 (George W. McCandless)

Upon the annexed stipulation, it is, now, on motion of Ehrich, Royall, Wheeler & Walter, solicitors for the complainant-appellee-appellant, George W. McCandless, as Receiver of Duquesne Gas Corporation,

Ordered, that the time for the complainant-appellee-appellant to serve and file his record on appeal in the above matter in the office of the Clerk of the United States Circuit Court of Appeals, for the Second Circuit, be and the same hereby is extended up to and including the 6th day of October, 1933.

Dated New York City, September 25th, 1933.

Charles Weiser, Clerk of the United States District Court, Southern District of New York.

[fol. 369] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION ANNEXED TO ORDER

It is hereby stipulated and agreed by and between the solicitors for the respective parties hereto that the time for the complainant-appellant George W. McCandless to serve and file the record on cross appeal in the office of the Clerk of the United States Circuit Court of Appeals for the Second Circuit, be and the same hereby is extended up to and including the 6th day of October, 1933, and that an order may be entered hereon without further notice.

Dated, New York, September 20, 1933.

Ehrich, Royall, Wheeler & Walter, Solicitors for Complainant-Appellant; Eppstein & Hirshfield, Solicitors for Defendants-Appellees.

[fol. 370] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the foregoing is a complete statement of the record in the District Court as agreed on by the parties, and that the same be filed in lieu of the original papers herein.

Dated, New York, October 3rd, 1933.

Eppstein & Hirshfield, Attorneys for Appellants Maxime H. Furlaud and Kingston Corporation and Byron Corporation and Chaucer Corporation, Appellees; Ehrich, Royall, Wheeler & Walter, Attorneys for Complainant-Appellee-Appellant.

[fol. 371] In United States District Court, Southern District of New York

[Title omitted]

Order Filing Record

Upon the foregoing consent of the attorneys for the respective parties, the printed record is hereby ordered filed in lieu of the original papers for the purpose of certifying the record on appeal.

Dated, October —, 1933.

John C. Knox, U. S. D. J.

[fol. 372] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 373] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1933

Argued December 11, 1933. Decided January 8, 1934

No. 199

GEORGE W. MCCANDLESS, as Receiver, etc., Plaintiff-Appel-CORPORATION, Complainant-Appellee-Appellant

v.

MAXIME H. FURLUND and KINGSTON CORPORATION, Defendants-Appellants-Appellees, and Byron Corporation and Chaucer Corporation, Defendants-Appellees, and Carlos Reuter, Defendant

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, L. Hand, and Chase, Circuit Judges

Suit by George W. McCandless, receiver of Duquesne Gas Corporation, to recover for breach of trust and resulting damages. Decree for the plaintiff against the defendants Maxime H. Furlaud and the Kingston Corporation, and dismissing the bill against the Byron Corporation and Chaucer Corporation. Defendants Furlaud and Kingston Corporation appeal; plaintiff also appeals. Decree reversed, with directions to dismiss the bill.

Ehrich, Royall, Wheeler & Walter, of New York City (Ralph Royall, Bartow H. Hall, and James G. Holland, all of New York City, and William A. Magee, and Clark Miller, both of Pittsburgh, Pa., of counsel), for complainant.

Eppstein & Hirschfield, of New York City (Louis B. Eppstein, Ira W. Hirshfield, and Louis J. Altkrug, all of New York City, of counsel), for appellants Maxime H. Furland and Kingston Corporation.

MANTON, Circuit Judge.

These are cross-appeals. Furlaud and Kingston Corporation appeal from a judgment of $1,834,640.08 against them for damages for breach of trust. The receiver ap-

peals from a refusal to decree $850,000 more; also from the dismissal of the suit against the Byron Corporation and Chaucer Corporation.

The plaintiff was appointed receiver of the Duquesne Gas Corporation in the Western District of Pennsylvania, having been appointed such on a stockholder's bill and a consent thereto by the Duquesne Gas Corporation. The bill of complaint, in this suit, alleges the appointment in the Western District of Pennsylvania, on January 19, 1932, stating that the receiver was appointed "of all the assets and property, including choses in action, of said Duquesne Gas Corporation, and the complainant has duly qualified and is now acting as such Receiver; that upon petition of the complainant as such Receiver duly filed in the United States District Court, in and for the Southern District of New York, an order was duly made on the 23rd of March, 1932 by said last mentioned Court appointing said complainant George W. McCandless, as Ancillary Receiver of Duquesne Gas Corporation which last men- [fol. 374] tioned order duly authorized the complainant, as such Receiver, to bring this suit, and the complainant has duly qualified and is now acting as such Ancillary Receiver."

The answer of the defendants denied this allegation and required proof thereof. The order appointing the plaintiff ancillary receiver after reciting the appointment in the Western District of Pennsylvania reads:

"Ordered, adjudged and decreed that George W. McCandless be and he is hereby appointed ancillary receiver of Duquesne Gas Corporation in and for the Southern District of New York to carry into force and effect the order of the court of original jurisdiction, and it is further

"Ordered, adjudged and decreed that said ancillary receiver is hereby authorized to bring an action against the promoters of said corporation * * * for an accounting and for the restitution of funds * * *."

The substance of this bill is that the banking house of Furlaud & Co., Inc., of which the defendant Furlaud was president, received the proceeds of a public sale of securities of the Duquesne Gas Corporation in a fiduciary capacity, for that corporation, and became accountable as a

trustee but, instead of accounting for the fund, diverted and misappropriated about one-half of the moneys received; that they caused the corporation Furlaud & Co., Inc., to be dissolved; that the defendants Kingston Corporation, Byron Corporation, and Chaucer Corporation were dummy corporations, used in attempting to cover up diversions and misappropriations.

This claim arises out of the following facts: Furlaud & Co., Inc., of New York City with offices there, early in 1930, with the defendant Furlaud, carried on a banking business. He and one Reuter, not served with process, were the chief stockholders and with other employees, directors, and officers, early in 1930, negotiated with the owners of nine gas properties located in the Pittsburgh, Pa., region and obtained options, without consideration, for their purchase by the Kingston Corporation. They employed an engineering firm, and about February 1, 1930, it made written reports appraising five of the properties at $1,700,000. These were purchased at about $1,300,000. The other four properties were appraised by other engineers at $5,000,000 in February, 1930, and the purchase price was about $1,200,000. Thereupon the Duquesne Gas Corporation was organized in Pennsylvania with 1,000 shares of no par value. In February, 1930, it was arranged with the various optionors for the execution of the assignments of the various gas properties by placing instruments of conveyance in escrow with banks located in Pittsburgh and Washington, Pa., and other convenient places. The instruments of conveyance, as deposited, ran to the gas corporation as transferee. The deposit agreement provided that the escrow banks, when notified by Furlaud, were to present drafts upon the Duquesne Gas Corporation for the respective balances of the purchase price, payable in New York, and that the banks, upon having telegraphic advices from their correspondent banks in New York that the drafts had been accepted, were to deliver the conveyances to named persons being the employees of the firm of attorneys who were in charge of carrying out the corporate proceedings. The aggregate balance of the purchase price of the nine properties payable under the escrow agreements was $2,449,900.

There was organized a bankers' syndicate and a distributing group for the issuance and sale of $4,000,000 of Duquesne Gas Corporation first mortgage 6 per cent con-

veritble gold bonds. Furland & Co., Inc., were the syndicate managers and, with four other banking houses, publicly announced the issue for sale on March 25, 1930, and about forty dealers in securities became the distributing group and sold the bonds. They were offered at 97½ and the distributing group were given 4 per cent. commission. Necessary proceedings were taken for the authorization of the bond issue, with a corporate mortgage to secure it, and for an issue of $1,000,000 of notes and for an increase of the capital stock from 1,000 shares to 1,250,000 shares without par value. The security for the bond issue was a mortgage covering the properties. It was out of these funds that payments for the oil properties were made. In our disposition of the case, it is sufficient to say that the net proceeds from the sale of the $4,000,000 bond issue is shown to have been $3,631,671.04; from the sale of the total note issue, $861,097.69; from the sale of 85,000 shares of stock, $850,000—a total of $5,342,768.23. The cost of the properties, including the working capital put in by the bankers, amounted to $2,937,989. It is shown that the amount received by the bankers from the bonds, notes, and [fol. 375] stocks now claimed to have been diverted and misappropriated to their own use, is $2,404,779.73. Whether this was a misappropriation of the funds or a legitimate profit we need not now decide.

The legal sufficiency of the appointment of the plaintiff as an ancillary receiver in the Southern District of New York was put in issue by the answer and he bears the burden of establishing its legality. Grant v. Leach & Co., 280 U. S. 351, 50 S. Ct. 107, 74 L. Ed. 470. The record of the ancillary proceedings in evidence consisted of: (a) A petition of the receiver, captioned "Frank T. Harrington, Complainant, against Duquesne Gas Corporation, Defendant," in the United States District Court for the Southern District of New York and annexed to the petition; (b) the amended bill of complaint filed in the Western District of Pennsylvania, captioned "Frank T. Harrington, Complainant, against Duquesne Gas Corp., Defendant"; (c) amendment to the prayer for relief in the action in the Western District of Pennsylvania; (d) answer of the defendant in the action referred to in (b); (e) a certified copy of the resolution of the board of directors of the Duquesne Gas Corporation, annexed to the answer filed in the Western

District of Pennsylvania; (f) the answer of the defendant Duquesne Gas Corporation filed in Pennsylvania action brought in the Western District by the trustee under the first mortgage of the Duquesne Gas Corporation; (g) the decree entered in the Western District of Pennsylvania; (h) a certificate of the clerk of the District Court for the Western District of Pennsylvania, certifying that a receiver's bond of $50,000 had been filed. On these papers the District Court for the Southern District of New York appointed the plaintiff ancillary receiver of the Duquesne Gas Corporation in this district, and authorized the suit to be brought against the promoters of the corporation for an accounting and for the restitution of funds, fraudulently diverted and misappropriated, and for secret and excessive profits. Thus, upon the petition alone of a foreign federal receiver, an ancillary receiver is appointed, where no bill had been filed in the jurisdiction by any party aggrieved praying for such relief. No process was issued in this jurisdiction and there has been no appearance or answer filed by the corporation within the district. This suit was instituted shortly after such appointment.

It has long been settled that an equity receiver is an officer of the court appointing him and, as such, he has no status and cannot be sued in a district other than the one in which he was appointed and he cannot recover property or assets of the corporation in receivership even though he may have been authorized to do so by the court of his original appointment. Booth v. Clark, 17 How. 322, 15 L. Ed. 164; Sterett v. Second Natl. Bank, 248 U. S. 73, 39 S. Ct. 27, 63 L. Ed. 135; Great Western Mining & Mfg. Co. v. Harris, 198 U. S. 561, 25 S. Ct. 770, 49 L. Ed. 1163; Hale v. Allinson, 188 U. S. 56, 23 S. Ct. 244, 47 L. Ed. 380. Nor may foreign receivers sue outside the district as a matter of comity even by obtaining permission before suit is commenced. Moore v. Mitchell, 281 U. S. 18, 24, 50 S. Ct. 175, 74 L. Ed. 673; Fowler v. Osgood, 141 F. 20, 4 L. R. A. (N. S.) 824 (C. C. A. 8). Moreover, the usual practice is to obtain an ancillary receiver by an independent bill requesting it. Indeed, it has been said that such an independent bill is required. Mercantile Trust Co. v. Kanawha Ry. Co. (C. C.) 39 F. 337. Even if there are assets in the foreign jurisdiction, the court there has a right to appoint a receiver only in a pending suit where independent relief

is asked. To permit a foreign receiver to obtain an ancillary appointment, on an ex parte application, improperly avoids the rule denying foreign receivers the right to sue in the foreign jurisdiction. The appointment of such receivers does not give him authority to acquire possession of property beyond the jurisdiction of his appointment. The right of a receiver to sue in a foreign court cannot be upheld as a mere incident to the office of a receiver. The appointing court cannot clothe him with such power and any attempt to confer any such authority on him is futile. Hilliker v. Hale (C. C. A.) 117 F. 220; Greene v. Star Cash & Package Co. (C. C.) 99 F. 656; In re Brant (C. C.) 96 F. 257; Mercantile Trust Co. v. Kanawha Ry C. (C. C.) 39 F. 337. The authority to sue is sufficiently raised by the denial of the allegation that the receiver was duly appointed. Grant v. Leach & Co., 280 U. S. 351, 50 S. Ct. 107, 74 L. Ed. 470; Fairview, etc., Co. v. Ulrich, 192 F. 894 (C. C. A. 7).

While ancillary receiverships are usually conducted in the spirit of comity, with a view of avoiding unnecessary conflict in the administration of the trust, they are, however, [fol. 376] in all respects the proceedings in two respective causes, each resting upon its own distinct basis. Ancillary proceedings are independent suits and there must be a plaintiff and a defendant and the first must be one who claims injury committed by the defendant. One who is not aggrieved cannot come into court and ask for the appointment of an ancillary receiver. Lack of title to the property is more than a mere technicality. It involves the very substance of a right to file the independent bill, Street's Equity Practice, vol. 3, § 2542; Walker v. U. S. Light & Heating Co. (D. C.) 220 F. 393. The appointment of the plaintiff as ancillary receiver was void, and he did not acquire, in any of the proceedings, a status to warrant the institution of this suit.

Decree reversed.

[fol. 377] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York,

on the 15th day of January, one thousand nine hundred and thirty-four.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Harrie B. Chase, Circuit Judges.

GEORGE W. MCCANDLESS, as Receiver, Etc., Plaintiff-Appellant,

vs.

MAXIME H. FURLUND and KINGSTON CORPORATION, Defendants-Appellants; Byron Corporation and Chaucer Corporation, Defendants-Appellees; Carlos Reuter, Defendant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is reversed with costs to the defendants.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 378] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. George W. McCandless, as Receiver, Etc., vs. Maxime H. Furlaud, et al. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 15, 1934. William Parkin, Clerk.

[fol. 379] UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit; Greeting:

Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Second Circuit, in a cause between George W. McCandless, as Receiver of Duquesne Gas Corporation, Complainant-Appellee-appellant, and Maxime H. Furlaud and Kingston Corporation, Defendants-Appellants-Appel-

lees, and Byron Corporation and Chaucer Corporation, Defendants-Appellees, et al., No. 199, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 15th day of January, A. D. 1934, is in the following words, viz;

"This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be, and it hereby is reversed with costs to the defendants.

It is further ordered that a mandate issue to the said District Court in accordance with this decree."

as by the inspection of the transcript of record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States by virtue of a writ of certiorari granted upon the petition of George W. McCandless, as Receiver, but limited to the questions pertaining to the validity of the appointment of the petitioner as ancillary receiver, and his right as such to maintain this suit, agreeably to the Act of Congress, in such case made and provided, fully and at large appears

And whereas, in the present term of October, in the year of our Lord, one thousand nine hundred and thirty-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, reversed with costs; and that George W. McCandless, as Receiver, etc., recover against Maxime H. Furlaud, et al., Three Hundred and One Dollars and Five Cents for his costs herein expended and have execution therefor.

[fol. 380] And it is further ordered, That this cause be, and the same is hereby, remanded to the said Circuit Court of Appeals for further proceedings in conformity with the opinion of this Court and for the determination of the questions relating to the liability of the defendants decided by the District Court and presented by the appeal and cross appeal.

November 5, 1934.

You, therefore, are hereby commanded that such execution and further proceedings be had in such cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, the eleventh day of December, in the year of our Lord one thousand nine hundred and thirty-four.

Costs of McCandless, as Receiver.

Clerk	$136.05
Printing record	145.00
Attorney	20.00
	$301.05

Charles Elmore Cropley, Clerk of the Supreme Court of the United States.

[fol. 381] SUPREME COURT OF THE UNITED STATES—OCTOBER TERM, 1934

Costs of George W. McCandless, as Receiver of Duquesne Gas Corporation

—— in No. 11

1933, October Term—Docketing cause and filing record, $10.00; appearance .25; filing precipe .25; filing papers $3.00; filing briefs $5.00; submission, .20; Order .20; filing and recording .65; certified copy of the order, $2.50; continuance, .25.

193-, October Term—Transfer, $1.00; filing and receipt, .25; filing papers, $4.25; filing briefs $5.00; argument, .20; decree $1.00; filing same, .25; recording, .40; mandate, $5.00; preparing record for printer, etc., $96.00; cost of printing record, $145.00; attorney's docket fee, $20.00; costs and copy, .40; 301.05

301.05

Fee Book, page 38504.

Test:

Charles Elmore Cropley, Clerk of the Supreme Court of the United States. H. W. Barr.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

GEORGE W. MCCANDLESS, as Receiver of Duquesne Gas Corporation,
Complainant-Appellee-Appellant,

against

MAXIME H. FURLAUD and KINGSTON CORPORATION,
Defendants-Appellants-Appellees,

and

BYRON CORPORATION and CHAUCER CORPORATION,
Defendants-Appellees,

and

CARLOS REUTER,
Defendant.

Before: MANTON, L. HAND and CHASE,
Circuit Judges.

Appeal from the United States District Court for the Southern District of New York. Decree for plaintiff awarding damages on an accounting against the defendants Maxime H. Furlaud and

Kingston Corporation only, who appeal. Decree reversed.

EHRICH, ROYALL, WHEELER & WALTER, Esqs.,
Solicitors for Plaintiff.
Ralph Royall, Esq.
James G. Holland, Esq.
William A. Magee, Esq.
Of Counsel.

EPPSTEIN & HIRSHFIELD, Esqs.,
Solicitors for Defendants, Maxime H. Furlaud, Kingston Corporation, Byron Corporation and Chaucer Corporation.
Louis B. Eppstein, Esq.
Ira W. Hirshfield, Esq.
Louis J. Altkrug, Esq.
Of Counsel.

MANTON, *Circuit Judge.*

The defendants, Maxime H. Furland and Kingston Corporation, appeal from a decree awarding the plaintiff the sum of $1,834,640.08 in the accounting suit for all funds or moneys coming into the hands of the defendants or any of them from the sale of bonds, notes and shares of stock of the Duquesne Gas Corporation.

A receiver was appointed for the Duquesne Gas Corporation in the United States District Court for the Western District of Pennsylvania, and he sued in the District Court for the Southern District of New York, without appointment therein as an ancillary receiver. We reversed the decree, on a former appeal, for failure to have an ancillary

receiver appointed in the Southern District of New York before suit (68 Fed. 2, 925). The Supreme Court reversed (79 Law. Ed. 32) remanding the cause to this court to pass upon the merits of the issues presented.

The gravamen of the bill of complaint is to be found in para. 17, which alleges that the receiver is entitled, on behalf of the Duquesne Gas Corporation, to have the defendants' account to the corporation "for the funds or moneys coming into their hands or into the hands of any of them or their agents or representatives from the sale of the securities of said Duquesne Gas Corporation or of any of said securities, and for the disposition made of such funds or moneys and to make restitution for any or all of such funds or moneys wrongfully diverted from Duquesne Gas Corporation and misappropriated or converted by the defendants or any of them to their own uses and for any or all secret or excessive profits taken or retained by them * * *."

The prayer for relief asked that the defendants be compelled to account, "for all funds or moneys coming into the hands of them or any of them or of the agents or representatives of any of them or in the hands of any one else acting with or for them from the sale of the bonds, notes and shares of stock of said Duquesne Gas Corporation."

The Kingston Corporation was organized under the New Jersey laws March 10, 1926; Furland & Company Inc. incorporated under the New York laws July 18, 1928. The latter was authorized to promote and assist in the financing of corporations, firms and syndicates in selling issues of securities. Defendant Maxime H. Furland was its president.

In 1929, the Kingston Corporation, a wholly owned subsidiary of Furland & Company Inc., ob-

tained options on various oil and gas properties in Western Pennsylvania, at a total purchase price of $2,572,989. Some of these options were taken in the name of an individual and later assigned to the Kingston Corporation. The properties were examined by engineers and appraisals were made; some, examined by one firm, at $4,929,787, and others, by another engineer, at $1,743,520. On February 21, 1930, Furlaud & Company Inc. caused the Duquesne Gas Corporation to be organized under the Pennsylvania laws with a capital issue of 1,000 shares of no-par value common stock. This was all subscribed and paid for by Furlaud & Company, Inc. at 50¢ a share, a price authorized by the Board of Directors of the Duquesne Gas Corporation. Arrangements were then made for the owners of the optional properties to execute deeds to the Duquesne Gas Corporation to be held in escrow in various banks in and around Western Pennsylvania, with directions to deliver them upon the payment of the purchase price. Prior to the date of closing, April 9, 1930, a bankers syndicate was organized consisting of Furlaud & Company Inc. as managers and other banking houses, to purchase, when and if issued and to distribute in allotted territories, first mortgage 6% gold bonds of the Duquesne Gas Corporation of a par value of $4,000,000 which it was arranged the Duquesne Gas Corporation would issue. On March 19, 1930, Furlaud & Company, Inc., as such distributing group manager, advised security dealers by letter that it had purchased "when, as and if issued" the bonds of the Duquesne Gas Corporation, and offered to sell these securities to the dealers for resale by them. A subscription blank accompanied the offer. It was filled in and returned to Furlaud & Company Inc. with each dealer's order. On March 25,

1930, an advertisement appeared in a New York newspaper over the names of the five members of the bank syndicate, offering the securities for sale. At this time, when the entire stock of the Duquesne Gas Corporation was held by Furland & Company Inc., the gas company authorized the issuance of four million dollars first mortgage bonds, and also one million dollars, 6½% notes to be secured by mortgages, and the authorized capital stock was increased from 1,000 to 1,250,000 shares of common stock without par value.

On April 7, 1930, an agreement of reorganization was entered into between the Duquesne Gas Corporation and the Kingston Corporation by which the latter agreed it would cause the optioned properties, all its assets other than cash, to be transferred to the Duquesne Gas Corporation, which in turn agreed to issue to the Kingston Corporation 535,000 shares of common stock without par value and $1,300,000 principal amount of convertible gold bonds and to issue an obligation of the Kingston Corporation to the Central Hanover Bank & Trust Company in the sum of $3,015,000. Prior to the closing on April 9, 1930, two loans were made by the Central Hanover Bank & Trust Company, one for $3,015,000 for the Kingston Corporation and the other for $3,379,500 to Furland & Company, Inc.

The Kingston Corporation, at the closing, delivered its certified checks, drawn on the Central Hanover Bank & Trust Company for a total of $2,449,900 to the Equitable Trust Company, the Guarantee Trust Company of New York, and the Central Hanover Bank & Trust Company respectively. These checks put the banks in funds to meet the drafts, in their hands, drawn on the Kingston Corporation by the banks in Western Pennsylvania,

which held in escrow the deeds transferring the properties to the Duquesne Gas Corporation. The Western Pennsylvania banks released the deeds upon being notified of the aforesaid payments. Upon receiving telegraphic and telephonic advice that the deeds had been recorded, the Duquesne Gas Corporation issued the securities to the Kingston Corporation in accordance with the terms of the reorganization agreement. At the same time Furlaud & Company Inc., pursuant to an agreement of April 7, 1930, delivered its check, drawn on the Central Hanover Bank & Trust Company, for $3,379,500 to the Duquesne Gas Corporation as the purchase price for $2,700,000 par value 6% bonds at 90, and $1,000,000. 6½% gold notes of the Duquesne Gas Corporation at 88; and 139,000 shares of its common stock at 50c a share. These securities were immediately delivered to Furlaud & Company Inc. Duquesne Gas Corporation then drew its check for $3,015,000 to the order of the Central Hanover Bank & Trust Company in payment of the Kingston Corporation's one-day loan, the payment of which the Duquesne Gas Corporation had assumed. The Duquesne Gas Corporation then had left in its treasury $365,000.

On the day of the closing, some of the security dealers, who had agreed to purchase about $2,350,000 face value of the bonds, sent their representatives to the Central Hanover Bank & Trust Company with checks payable to the order of Furlaud & Company, Inc., and picked up the bonds which they had agreed to purchase. The checks thus received totaled $1,886,330. Furlaud & Company Inc. then paid its loan to the Central Hanover Bank & Trust Company by the application of $1,886,330; $700,000 it had borrowed from the Chatham & Phenix National Bank & Trust Co.; $300,000 bor-

rowed from the Hibernia Trust Company, and $500,000 borrowed from the Pacific Trust Company. Furlaud & Company Inc. then paid its other bank loans. The Kingston Corporation turned over to Furlaud & Company Inc. $300,000, certain expense moneys advanced by Furlaud & Company Inc. in connection with the acquisition of the properties, and at the same time the Kingston Corporation loaned Furlaud & Company Inc. $265,000. The entire issue of bonds was not disposed of on April 9, 1930, and Furlaud & Company Inc. organized a secondary distributing group in August, 1930, to sell them. Furlaud & Company Inc. made purchases in the open market totaling $1,194,000. which it disposed of from time to time up to July, 1931. A few weeks after the closing, Furlaud & Company Inc. sold the one million dollar gold note issue to another security house for $886,546.56. Maxime H. Furlaud had no relation to these transactions other than as an officer and director of Furlaud & Company Inc., and his personal activity in carrying on the negotiations and transactions. He did not participate in the alleged fraudulent appraisal or receive personally any of the moneys paid to Furlaud & Company Inc.

The recovery below seems to be grounded upon the supposed right of a receiver in sequestration proceedings to recover profits made, which the court thought excessive, and in legal effect, to say that all the moneys resulting from the sale of the securities were held in trust for the benefit of the Duquesne Gas Corporation. Furlaud is held individually on the theory of a breach of trust. No trust funds ever came into his hands.

As stated by the court below:

> "At the time that the transactions through which Duquesne Gas Corporation acquired the

> various gas properties were consummated, and for some time thereafter, Furlaud & Company Inc., owned every share of its capital stock, and ratified and approved of the whole transaction."

At the end of these transactions, the two corporations, Furlaud & Company Inc. and its subsidiary, Kingston Corporation, owned all of the issued common capital stock of the Duquesne Gas Corporation, and all of its bonds and notes. No other person purchased from Duquesne Gas Corporation a share of stock, a bond or a note. Neither a corporation nor its receiver has any right of action against the organizers of the corporation for the recovery of profits made by such organizers in the sale of securities, where the organizers became the owners of all the authorized and outstanding stock of the corporation. *Old Dominion Copper Co.* v. *Lewisohn*, 210 U. S. 206; *Ball* v. *Breed*, 294 Fed. 227.

The receiver now contends that misrepresentations as to the value of the properties transferred were made on their resale to the Duquesne Gas Corporation. If such be the fact, the receiver may not recover therefor. *Old Dominion Copper Co.* v. *Lewisohn, supra.* As there stated:

> "If there was a wrong, it was when the innocent public subscribed. But what one would expect to find, if a wrong happened then, would not be that the sale became a breach of duty to the corporation *nunc pro tunc*, but that the invitation to the public without disclosure, when acted upon, became a fraud upon the subscribers from an equitable point of view, accompanied by what they might treat as damage. For it is only by virtue of the innocent

> subscribers' position and the promoter's invitation that the corporation has any pretense for a standing in court. If the promoters, after starting their scheme, had sold their stock before any subscriptions were taken, and then the purchasers of their stock, without notice, had invited the public to come in, and it did, we do not see how the company could maintain this suit. If it could not then, we do not see how it can now."

The principle announced in *Ball* v. *Breed, supra,* by this court, is applicable here. There a suit was brought by a receiver on the theory that the profits made by the promoters were without the knowledge and consent of the corporation, and that the corporation does not consent if any existing stockholder is ignorant of a transaction involving a so-called secret profit. There the secret profit was a matter of contract between one who had acquired an option to purchase the stock, securities and indebtedness of a corporation, and bankers. The bankers owned all the preferred, common and founders' stock subscribed for or intended to be issued. No other persons had rights to receive stock from the corporation. There were no innocent stockholders. This court said:

> "If, then, there was a fraud, it was not against the corporation, and a cause of action, if any, is personal to the purchasers of the stock. The fraud, if any, is what has been called a subsidiary fraud not affecting the corporation."

In the instant case, as in the *Ball* case, at the conclusion of the transaction between the organizers of the corporation and the corporation, all of the

stocks and securities authorized and issued and intended to be issued by the corporation belonged to the persons of whose actions the receiver now complains. In the instant case, the organizers of the corporation, in addition to receiving stock of the Duquesne Gas Corporation, also received its bonds and notes, thus embracing all the securities issued. These circumstances forbid the plaintiff maintaining that a trust was created for any alleged unreasonable profit or any other sums that should have been placed in the treasury of the corporation as a result of the sale of the securities. *Blum* v. *Whitney*, 185 N. Y. 232; *Seymour* v. *Spring Forest Cemetery Asso.*, 144 N. Y. 333; *Wells* v. *Northern Trust Co.*, 195 Ill., 288; *Allenhurst Park Estates* v. *Smith*, 101 N. J. Equity, 581; *Tompkins* v. *Sperry, Jones & Co.*, 96 Med. 560; *Hayes* v. *The Georgian*, 280 Mass. 10.

But the court below said the bondholders were induced to purchase the securities so issued by the Duquesne Gas Corporation by misrepresentations, and, as a result, a trust in favor of the corporation arose. Citing, *McKee* v. *Mamon*, 159 U. S. 317; *Sayer* v. *Wynkoop*, 248 N. Y. 54. In the *McKee* case, the money was turned over to McKee in trust requiring him "to pay over to all parties who have rendered services in the prosecution of this claim the amount due to such persons". In the *Sayer* case, the money was due to an insurance company as premiums on policies and the debtor made payment to his broker with instructions to pay these premiums. In each case a property right existed in favor of the plaintiff in the fund delivered to the trustee for a specific purpose. Here, if any misrepresentation was made in the sale of the securities under the circumstances above described, a cause of action might exist against Furland & Com-

pany, Inc. or the other banking houses, by the security holders, but no trust was created in favor of the corporation for any of the moneys received. *Piggly-Wiggly Delaware, Inc.* v. *Bartlett,* 95 N. J. Equity, 469; *Whitten* v. *Dabney,* 171 Cal. 621; *Turner* v. *Markham,* 155 Cal. 562; *Vigers* v. *Pike,* 8 Cl. & F. 562.

To be sure, in so far as the property of the corporation is concerned, the receiver holds it for the benefit of all creditors. As to such property, he may be regarded as a trustee. The property that is transferred to him as the receiver of such corporation for administration is the property of the corporation. This does not include any personal rights or property belonging to others who are not parties to the receivership proceedings. It does not include the personal rights of the individuals who have become bondholders. To establish a cause of action, for the bondholders, for fraud in the issuance of these bonds, it is necessary to allege and prove not only that false representations were made, but that they were materially so. It is also essential to show that the purchaser relied upon such misrepresentations and believed them to be true, acting upon them and making his investments upon such reliance. *Scovil* v. *Thayer,* 105 U. S. 143; *Foster* v. *Seymour,* 23 Fed. 65. And if there be any wrong, it was a wrong individual to the bondholders; it was not a wrong against the Duquesne Gas Corporation, at least such as can be held to be the result of a breach of trust as pleaded and claimed in support of this cause of action. Cross bill affirmed with directions to dismiss the bill.

Decree reversed.

[fol. 393] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court-rooms in the Post Office building, in the City of New York, on the 11th day of March, one thousand nine hundred and thirty-five.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Harrie B. Chase, Circuit Judges.

GEORGE W. MCCANDLESS, as Receiver, etc., Plaintiff-Appellant,

vs.

MAXIME H. FURLAUD and KINGSTON CORPORATION, Defendants-Appellants

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is reversed, and affirmed as to the cross appeal with directions to dismiss the bill. Costs of the appeal to the defendants.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

WM. PARKIN, Clerk.

[fol. 394] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. George W. McCandless, as Receiver, etc., vs. Maxime H. Furlaud et al. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 11, 1935. William Parkin, Clerk.

[fol. 395] UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify

that the foregoing pages, numbered from 1 to 394, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of George W. McCandless, as Receiver, etc., Plaintiff-Appellant, against Maxime H. Furlund and Kingston Corporation, Defendant-Appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 16th day of April, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals for the Second Circuit.)

[fol. 396] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 13, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,508. U. S. Circuit Court of Appeals, Second Circuit, Term No. 26. George W. McCandless, as Receiver of Duquesne Gas Corporation, Petitioner, vs. Maxinme H. Furlaud, Kingston Corporation, Byron Corporation, et al. Petition for a writ of certiorari and exhibit thereto. Filed April 18, 1935. File No. 26 O. T. 1935.